

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8  
9 Transcript of excerpt of testimony of

10 BRYAN ACEE

11 February 23, 2018 and February 26, 2018  
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I N D E X

EXAMINATION OF BRYAN ACEE

By Mr. Castellano

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EXAMINATION OF BRYAN ACEE

By Mr. Lowry

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REPORTER'S CERTIFICATE

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1 February 23, 2018

2 THE COURT: All right. Does the  
3 Government have its next witness or evidence?

4 MR. CASTELLANO: Your Honor, the United  
5 States recalls Special Agent Bryan Acee.

6 THE COURT: All right. Mr. Acee, if  
7 you'll return to the witness box, I'll remind you  
8 that you're still under oath.

9 BRYAN ACEE,  
10 after having been previously duly sworn under  
11 oath, was questioned, and continued continued as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. CASTELLANO:

15 Q. Agent Acee, I wanted to recall you to  
16 clarify and to touch on some points that have come  
17 up during the trial now. When Eric Duran left New  
18 Mexico, was he still -- after his cooperation and  
19 after the recordings, was he still working for the  
20 FBI?

21 A. Yes.

22 Q. And at some point did you hand him off to  
23 another FBI office in another state?

24 A. I did.

25 Q. At that point if he was earning benefits,

1 was he earning benefits or basically getting paid as  
2 a confidential human source from this case or was he  
3 getting paid from the other district?

4 A. From the other district.

5 Q. And is that for any work he was doing over  
6 there as a confidential human source?

7 A. Yes.

8 Q. Now, when someone's working as a source  
9 like that, is the FBI supposed to be notified if  
10 that person is arrested?

11 A. Yes.

12 Q. And in this case were you aware or were  
13 you made aware of his arrest through FBI channels?

14 A. No.

15 Q. Do you know why that is? How is it that  
16 you're supposed to be notified when someone is  
17 arrested?

18 A. When someone is arrested, they're  
19 fingerprinted by the jail facility. Those  
20 fingerprints are entered into the FBI's NCIC, or  
21 National Criminal Information Center database. And  
22 it's been my experience, I've had informants  
23 arrested before that I'll get the notification about  
24 12 hours later. In this case we did not get  
25 notifications.

1 Q. How did you find out that Eric Duran had  
2 been arrested?

3 A. I learned it during a pretrial hearing  
4 from one of the defense attorneys.

5 Q. So before that time did you know of any  
6 arrest by him?

7 A. I did not.

8 Q. If that's the case, were you involved in  
9 any of his cases or arrests since you had not heard  
10 about them?

11 A. No.

12 Q. What did you do once you learned this  
13 information?

14 A. Confirmed it. I reported it to the  
15 authorities in the district, the state he was  
16 working in, and I requested that they pick him on an  
17 arrest warrant for violating parole.

18 Q. And did you try to contribute to his  
19 arrest by using any investigative techniques?

20 A. I did.

21 Q. What did you do?

22 A. The agents that I work with on my team and  
23 I drafted and obtained search warrants for Google,  
24 Facebook, and a couple cellular telephone accounts  
25 that we had attributed to him. We also interviewed

1 his family and associates. And we put out Be On The  
2 Lookout fliers with the proactive police units in  
3 the area that he was in and asked them to hunt him  
4 down, to look for him.

5 Q. And then was he eventually arrested?

6 A. He was.

7 Q. Did you have anything do with any of his  
8 cases or the disposition, dismissals, charging  
9 decisions, anything like that?

10 A. Not with dismissals, no. I pushed that he  
11 would be charged federally once I learned that there  
12 was a firearm involved and he may have possessed it.

13 I pushed hard with your office and the  
14 other prosecuting authorities to charge him  
15 federally for it so that he'd, in my mind, be held  
16 more accountable.

17 Q. And you mentioned a firearm was involved.  
18 As a result -- was the firearm in the vehicle where  
19 he was located?

20 A. It was under his seat. It wasn't on his  
21 person, it was found under the seat that he was  
22 seated in.

23 Q. And as a result of it being in at least  
24 the same vehicle as him, what steps did you take  
25 then to possibly match him up to that firearm?

1           A.     I wrote a search warrant for Duran before  
2 he even arrived back in New Mexico. I explained to  
3 the judge that I expected him to be here within a  
4 few days. The judge approved that warrant.

5                     And once he arrived in New Mexico, myself  
6 and Agent Stemo went to that facility and we  
7 executed a search warrant, collected his DNA. And  
8 then later that day, I Fed Ex'd it up to the FBI  
9 agent in the other office and asked her to submit it  
10 to their lab and use it in the potential prosecution  
11 of Duran, to match that, Duran's DNA profile, to  
12 what might be on the firearm.

13           Q.     And are you aware of any results coming  
14 back yet?

15                     MR. LOWRY: Objection. Calls for hearsay.

16                     THE COURT: Well, this will just be a  
17 yes/no answer, and then we'll see if the Government  
18 wants to --

19                     MR. CASTELLANO: I'm not looking for what  
20 the results are. I'm just asking if the results  
21 have come back.

22                     THE COURT: So it's a yes/no answer.

23           A.     No.

24 BY MR. CASTELLANO:

25           Q.     There has been discussion about Mr. Duran

1 receiving what's called a lump sum award from the  
2 Department of Corrections. Did you have anything to  
3 do with that?

4 A. I did not.

5 Q. There has obviously been a lot of  
6 discussion about the Molina paperwork in this case.  
7 Are you aware of when that investigation happened?

8 A. Yes.

9 Q. When was that?

10 A. July of 2009.

11 Q. And as far as you know, at least until  
12 very recently, was any of the paperwork from that  
13 discovery disclosed in this case?

14 A. It was not.

15 Q. So in other words, would there have been  
16 paperwork from that investigation loaded onto the  
17 tablets for people to see?

18 A. No.

19 Q. When we talk about the investigation of  
20 July 2009 regarding Mr. Molina, what was the nature  
21 of that investigation?

22 A. It talked about a lot of stuff, but I'll  
23 try to narrow it. It was what I would describe as a  
24 strong-arm robbery that involved more than one  
25 subject. The police linked the vehicle in the



1 robbery to Molina. They questioned him about it,  
2 and he provided a statement which actually was  
3 recorded. I don't know if Molina knew that. But  
4 the police reports included transcripts of the  
5 recording the detective made of his interview. I  
6 believe his residence was also searched.

7 Q. Regarding Mario Rodriguez, there was  
8 discussion about a murder conspiracy he told you  
9 about involving Carlos Herrera. Do you remember  
10 that?

11 A. Yes.

12 Q. And did you listen to the recordings in  
13 this case involving Mr. Herrera?

14 A. Yes.

15 Q. Did some of those recordings involve Mr.  
16 Herrera speaking in a way that would be considered  
17 disrespectful towards other SNM members?

18 A. Yes.

19 Q. And was it your understanding that part of  
20 that disrespect was part of the reason for the  
21 murder conspiracy?

22 A. Yes.

23 MR. MAYNARD: Objection, Your Honor.  
24 That's just opinion, speculation.

25 THE COURT: Well, let me make sure I

1 understand the question. Did you ask the  
2 question -- what the transcript says is recordings  
3 involved Mr. Herrera speaking?

4 MR. CASTELLANO: That's correct, Your  
5 Honor. From some of the recordings in this case.

6 THE COURT: Well, I'm going to sustain the  
7 objection then.

8 BY MR. CASTELLANO:

9 Q. Regarding the shank found in Mario  
10 Rodriguez's shoe, how is it that you became aware of  
11 that?

12 A. He told me about it during a debrief.

13 Q. And then after he told you about it, was  
14 it then discovered?

15 A. Yes.

16 Q. Did you discover any other items or shanks  
17 from information that he provided?

18 A. Yes.

19 Q. Where were those shanks located?

20 A. They're both located up at the  
21 Penitentiary of New Mexico. I believe one was in  
22 the North facility, Level 6, and one in the South  
23 facility.

24 Q. I'm not going to ask you for names here,  
25 but did Mr. Rodriguez give you a name of a hit list

1 of people who were on a list as a result of  
2 cooperation in this case?

3 A. Yes.

4 Q. There is also the testimony about a  
5 meeting between Mr. Calbert, also known as Spider,  
6 and Mr. Urquizo, also known as Marijuano. Do you  
7 remember that?

8 A. I do.

9 Q. And do you remember the occasion where Mr.  
10 Urquizo was debriefing at the FBI?

11 A. Yes.

12 Q. And was Mr. Calbert scheduled for a  
13 possible debrief following Mr. Urquizo's debrief?

14 A. Yes.

15 Q. When these two meetings were scheduled,  
16 was there any plan to have those two get together to  
17 talk?

18 A. No.

19 Q. And as a result of speaking with Mr.  
20 Urquizo, how was it that he and Mr. Calbert had the  
21 idea of getting together?

22 A. Well, Calbert wasn't involved in the idea.  
23 What happened is during our debrief of Urquizo at  
24 the FBI office in Albuquerque, he mentioned that he  
25 thought Calbert would --

1 MR. LOWRY: Objection. Hearsay.

2 THE COURT: Well, it seems like these are  
3 just out-of-court statements being offered for the  
4 truth, so sustained.

5 MR. CASTELLANO: It's only used for the  
6 reason why they were -- we don't want them for the  
7 truth, Your Honor, just to explain why the meeting  
8 happened.

9 THE COURT: Well, I guess I'm not seeing  
10 the importance of that, so it seems to me the  
11 statements are coming in, so I'll sustain it.

12 MR. CASTELLANO: I'll rephrase, Your  
13 Honor.

14 BY MR. CASTELLANO:

15 Q. Were you aware of any friendship between  
16 Mr. Urquizo and Mr. Calbert as a result of the  
17 debrief of Mr. Urquizo?

18 A. Yes.

19 Q. As a result of that friendship, on that  
20 day was it clear whether or not Mr. Calbert would  
21 cooperate with the Government?

22 A. No.

23 Q. And consequently then did Mr. Urquizo  
24 believe that if he met with Mr. Calbert, he could  
25 put him at ease about cooperation?

1 MR. LOWRY: Objection. Calls for hearsay.

2 THE COURT: Sustained. Sustained.

3 BY MR. CASTELLANO:

4 Q. Don't answer. So based on what you knew  
5 about the relationship between Mr. Urquizo and Mr.  
6 Calbert, did you put those two together?

7 A. Yes.

8 Q. About how long did they meet?

9 A. In my presence, about five minutes.

10 Q. Where did they meet out of your presence?

11 A. In the same area, but we allowed the  
12 attorneys to close the door, both of their attorneys  
13 were there and they wanted attorney-client  
14 conversation without agents in the room. So I stood  
15 outside the door.

16 Q. Were you able to see inside the room?

17 A. I was.

18 Q. How were you able to see in there?

19 A. There is a window. There are also  
20 cameras, but we turned those off once the attorneys  
21 went in.

22 Q. About how long was the meeting with those  
23 two individuals and their attorneys?

24 A. About 10 minutes.

25 Q. After that meeting then did Mr. Calbert

1 agree to cooperate?

2 A. He did.

3 Q. In terms of the investigation of the SNM  
4 prison gang, in addition to prosecuting people for  
5 crimes, was one of the goals the dismantlement of  
6 the gang?

7 A. It is.

8 Q. And by making people witnesses in this  
9 case, how does that contribute to the dismantlement  
10 of the gang?

11 A. Can't be FBI witnesses and prison gang  
12 members.

13 Q. What about people who aren't witnesses but  
14 still became informants, provided information to the  
15 FBI and whose names were listed in reports?

16 A. Well, they have the same fate. They can't  
17 be government cooperators and gangsters.

18 Q. So even for those people, once their name  
19 comes out in the reports, is there much of an option  
20 for them in terms of the SNM?

21 A. No. They sometimes think there is. They  
22 have identity crisis, but don't make any mistake  
23 about it, they can't be both.

24 Q. And the testimony in this case has  
25 involved the SNM in the State of New Mexico prison

1 system. So ideally for some people will they then  
2 be -- for convictions, just generally speaking, are  
3 there places in federal prisons out of state where  
4 people can be sent?

5 A. Yes.

6 Q. And there has been discussion about Gerald  
7 Archuleta and the three-year maximum sentence he  
8 faces. Do you remember that?

9 A. Yes.

10 Q. At one point were you seeking to have him  
11 charged with something more serious based on the  
12 injuries to Julian Romero?

13 A. I was.

14 Q. What happened as a result of the injuries?

15 A. Well, I couldn't find -- the medical  
16 professionals that treated him did not agree that he  
17 sustained serious bodily injury. And the statute,  
18 in order for me to charge the more serious crime,  
19 there had to be a finding of serious bodily injury.  
20 And I needed a medical professional to testify to  
21 that and they did not consider it serious bodily  
22 injury.

23 Q. So the actual injuries suffered?

24 A. I'm sorry?

25 Q. The actual injuries that he suffered.

1 A. Yes. In the view of the medical staff,  
2 that's what their conclusion was.

3 Q. And what impact does it have for someone  
4 like Gerald Archuleta to become a government  
5 witness, in terms of the gang?

6 A. It's demoralizing. He's one of their  
7 great leaders and he wired up for us.

8 Q. And approximately how long before he  
9 cooperated did he wire up, as you called it?

10 A. Well, it took us a while to get him back  
11 to New Mexico, so I think it was right after he got  
12 here. But I just -- I'm hesitating because I think  
13 it might have taken a couple of months for him to  
14 actually get here on the slow transport back to New  
15 Mexico.

16 Q. And back to New Mexico from what state?

17 A. Tennessee.

18 Q. And how quickly did he agree to cooperate?

19 A. Right away, as soon as I met him.

20 Q. And the jury heard about a number of  
21 murders for which he was convicted. Did he actually  
22 serve time for those murders?

23 A. Yes.

24 Q. We've used the term debriefs a lot in this  
25 trial. I don't know if we've ever really defined it



1 for the jury. What would you call a debrief or  
2 debrief session?

3 A. Sure. A debrief session is my first  
4 sit-down with a defendant. So I haven't met them.  
5 And in the majority of these cases, the debriefs  
6 were with defendants that were represented. So we  
7 had to -- you know, their attorneys would come. The  
8 attorneys here from the United States would come,  
9 myself and the other agents. And it would be our  
10 initial meet.

11 We'd introduced who we were. The  
12 attorneys always introduced whatever legal  
13 paperwork, typically the Kastigar letter. Sometimes  
14 there were other discussions that the attorneys had.

15 And then at some point in the debrief, the  
16 conversations turned over to the agents. And that's  
17 when I or one of the other agents starts actually  
18 debriefing and asking questions of the defendant.

19 Q. At an initial debrief -- and let's focus  
20 on the SNM, for example. What's the initial  
21 information you're seeking the first time you sit  
22 down with somebody?

23 A. I want the 30,000-foot view, if you will,  
24 of what they know. Because the case encompasses  
25 over 30 years of stuff we're looking at. So I want

1 to know when they got in, what group, kind of what  
2 leadership they fell under, how long they've been  
3 in, who brought them in, which of the homicides they  
4 know about, what years they were incarcerated, what  
5 other family members they might have in. That sort  
6 of general overview is what I'm looking for. So we  
7 can narrow -- helps me narrow in later, in  
8 subsequent interviews.

9 Q. And then generally speaking, you said  
10 there are sometimes subsequent interviews. What do  
11 you do with the information you initially get from a  
12 first interview session?

13 A. Write it up in a 302.

14 Q. What's a 302?

15 A. Those are our standard reports. It's just  
16 the number the FBI has given it many years ago.  
17 It's a 302 form.

18 Q. Then what do you do with that information?

19 A. That's turned over to your office for  
20 decisions in making prosecution, whether or not we  
21 prosecute somebody.

22 Q. And for the cases we've referred to as  
23 cold case homicides, once you received information  
24 like that, did you then start digging to try to find  
25 information related to those homicides?

1 A. Yes.

2 Q. And other crimes as well?

3 A. Yes.

4 Q. Now in a case like this, as we moved  
5 closer to trial, did the information become more  
6 focused on the defendants and the information for  
7 this trial?

8 A. Absolutely.

9 Q. Now, at some point when someone decides to  
10 cooperate, were there times when you would do what's  
11 called a threat analysis with family members?

12 A. Yes, I always did that if they had family.

13 Q. What was the purpose of doing that?

14 A. Mainly so that the family -- particularly  
15 in these cases, most of the family members were gang  
16 members. And I wanted to give them a face-to-face  
17 where they could see us, gauge our sincerity in  
18 trying to keep them safe, give them our contact  
19 information. Explain kind of our expectations of  
20 the family and what their options were in terms of  
21 safety.

22 Q. And there's also been probably a little  
23 confusion about who debriefed when and when they  
24 pled guilty, things of that nature. Did you prepare  
25 something to aid you in your testimony in terms of

1 when people debriefed, how many times and when they  
2 pled guilty?

3 A. Yes.

4 Q. Would it aid your testimony to look at  
5 this document?

6 A. Yes, sir.

7 MR. CASTELLANO: May I have a moment, Your  
8 Honor?

9 THE COURT: You may.

10 MR. CASTELLANO: May I approach the  
11 witness, Your Honor?

12 THE COURT: You may.

13 BY MR. CASTELLANO:

14 Q. Agent Acee, for purposes of  
15 identification, I'm handing you what's been marked  
16 as Government's Exhibit 777. I'll have you look at  
17 it and tell us what that document is.

18 A. This is a chart I created a couple days  
19 ago. It charts witness debriefings of the 16  
20 cooperating defendants or witnesses in this case.

21 Q. And what's documented in this exhibit?

22 A. The dates of their debriefs. And then  
23 that's just in columns. I've identified each one by  
24 name as well as their moniker if they have one. And  
25 then on the end column, I put the date that they

1   pled guilty, if it involved a guilty plea. Those  
2   that weren't charged, it just says N/A next to it.

3           Q.    So when we talk about debriefs, really how  
4   short or long can some of the reports be in a case  
5   like this?

6           A.    I think my shortest reports might only be  
7   a page. And some of the longer ones might be a  
8   dozen or 20 pages, single spaced, typed.

9           Q.    So on the first particular meeting, are  
10   you going to get every bit of information out of  
11   somebody that they have?

12          A.    No. And I mean please keep in mind, I'm  
13   learning about the organization as I'm meeting these  
14   guys and talking to them. It wasn't an organization  
15   I had really any knowledge of before I started the  
16   case. So I'm learning as we go as well about the  
17   organization.

18          Q.    And so when we call it a debrief, is it  
19   basically just an interview between the defendant  
20   and members of the government?

21          A.    Yes, and their attorney is there.

22          Q.    And speaking of attorneys, when Billy  
23   Cordova first agreed to record in the prison, do you  
24   know if he was even represented at the very  
25   beginning?

1           A.     He wasn't. He had an attorney related to  
2 his state case. I didn't interact with that  
3 attorney. He wasn't appointed a federal attorney  
4 until after, much later after the recordings.

5           Q.     The debrief dates on here are based on  
6 what information?

7           A.     My 302s or the 302s of other agents.

8           Q.     Did you compile this list to aid you in  
9 your testimony?

10          A.     Yes, sir.

11                 MR. CASTELLANO: Your Honor, at this time  
12 I move the admission of Government's Exhibit 777.

13                 THE COURT: Any objection?

14                 MR. LOWRY: Your Honor, yes. Under 1006,  
15 we just haven't had sufficient notice to review this  
16 to compare or assess its accuracy.

17                 MS. JACKS: I would join.

18                 THE COURT: Well, let's do this. Why  
19 don't y'all take a look at it during the break?  
20 What I'd be inclined to do is admit it, you can look  
21 at it over the weekend. If there's some problem, it  
22 will be a conditional admittance. The only issue is  
23 whether he got it right, and give you some chance to  
24 look at it. If we need to correct it, we'll correct  
25 it. Would that work for you, Mr. Lowry?

1 MR. LOWRY: I believe it would, Your  
2 Honor. Yes, if you're giving us the weekend to look  
3 at it.

4 THE COURT: If it's a conditional  
5 admittance, would that work with you, Ms. Jacks?

6 MS. JACKS: That will.

7 THE COURT: All right. So I'll admit  
8 conditionally Exhibit 777, but give the defendants  
9 an opportunity to look at it during the break and  
10 over the weekend. If we need to make some changes,  
11 we'll address it then.

12 All right. Why don't we take our  
13 afternoon break at this point, so be in recess for  
14 about 15 minutes. All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. We'll be in recess  
17 for about 15 minutes.

18 (The Court stood in recess.)

19 THE COURT: Let's go on the record while  
20 Ms. Standridge is getting the jury. We got a  
21 note -- was it from Juror Number 14? Was it from  
22 Mr. Johnston or --

23 CLERK: Yes.

24 THE COURT: Mr. Johnston. Received a note  
25 from Mr. Johnston. It says, "Clarification/:" It

1 says "Will transcripts or recordings be available,"  
2 looks like he abbreviated that, just "A-V-A-I-L for  
3 jury deliberation?" I think I had ruled earlier  
4 that they would not. I think that was what the  
5 defendants wanted. So unless there's some change of  
6 heart, do you want the transcripts to go back? I  
7 guess I could do two things. One, I could just not  
8 address it today and leave it for something -- you  
9 know, they'll just get the evidence and they'll  
10 figure it out on their own. Or I could say no, or I  
11 could read the cautionary instruction about  
12 transcripts. And then at the very end, after I do  
13 it, just indicate what I said in the preliminary  
14 instruction -- I'd have to get a copy of the  
15 preliminary, printout of the preliminary, where I  
16 told them that they wouldn't get transcript. But  
17 that was more of Ms. Bean's transcripts than  
18 anything else. I'm not sure it addresses it.

19 Any thoughts from the defendants?

20 MR. LOWRY: Yes, Your Honor. I don't know  
21 that I speak on behalf of everyone. But I exchanged  
22 emails with Mr. Beck over the weekend, I believe.  
23 And it was our understanding that the transcripts  
24 would not go back and they would not be tendered as  
25 exhibits.



1           And frankly, out of a professional  
2   courtesy, we didn't quibble too much with the  
3   transcripts that were offered by the United States,  
4   but they're -- and I don't mean this in a derogatory  
5   way, but they're riddled with errors. And it would  
6   be just fundamentally unfair --

7           THE COURT: I'm not asking you to change.  
8   I just need to know what you want me to tell the  
9   jury.

10          MR. LOWRY: No, they're not going back.

11          THE COURT: Do you want me to give them a  
12   cautionary instruction at this time and then just  
13   add that?

14          MR. LOWRY: Yes.

15          MS. JACKS: Your Honor --

16          MR. LOWRY: Go ahead.

17          MS. JACKS: -- may I be heard?

18          THE COURT: Uh-huh.

19          MS. JACKS: My suggestion would be to do  
20   nothing until the case is over and the Court reads  
21   the instructions to the jury. And then at that  
22   time, if they still have a further question, to  
23   answer it then.

24                But I think by answering it now and  
25   answering it so quickly, I think we're just inviting

1 more questions of the same nature.

2 THE COURT: Well, y'all think about it  
3 over the weekend. One thing we can do, we do have  
4 this cautionary instruction in our final. So if you  
5 want to add something, you're not going to get the  
6 transcripts, or something, we can add that. They'll  
7 figure it out soon enough. Why don't I just have  
8 Ms. Standridge mark that as Exhibit --

9 THE CLERK: T.

10 THE COURT: -- T, just so the record's  
11 clear. My yellow sheet to you today was R.  
12 Ms. Duncan's three documents were S, so this will be  
13 Exhibit T to the clerk's minutes.

14 All rise.

15 (The jury entered the courtroom.)

16 THE COURT: All right. Mr. Acee, I'll  
17 remind you that you're still under oath.

18 Mr. Castellano, if you wish to continue  
19 your direct examination of Mr. Acee, you may do so  
20 at this time.

21 MR. CASTELLANO: Thank you, Your Honor.

22 May I publish Government's Exhibit 777 at  
23 this time?

24 THE COURT: You may.

25 BY MR. CASTELLANO:

1 Q. Agent Acee, I'm showing you Government's  
2 Exhibit 777. And for starters, I'm highlighting  
3 Gerald Archuleta's name on there. He's number 10 on  
4 the list. And can you see from his initial debrief  
5 on 1/21 of '16, to his guilty plea date on 6/16 of  
6 '16, is it fair to say within five months of his  
7 initial debrief he pled guilty?

8 A. Yes, sir.

9 Q. And so there's been a lot of questions in  
10 this case about when people were housed with  
11 cooperators and things of that nature. For the most  
12 part, when the initial debrief date is given in the  
13 first column, is that generally the date when  
14 someone decided to cooperate?

15 A. Yes.

16 Q. So if we see those dates, we know on or  
17 about that date that that's when the person decided  
18 to cooperate with the Government?

19 A. Correct.

20 Q. And so another example is, let's see,  
21 Mario Rodriguez. So he's Number 5 on this list. So  
22 is he one of the latest people to debrief and  
23 cooperate?

24 A. Yes, he's the latest.

25 Q. And also on these dates, when we have

1 later dates, going all the way to as recently as  
2 January and February of 2018, are those going to be  
3 the later debriefs in preparation for trial?

4 A. Yes. And those were largely driven by  
5 your office, the terms of the debrief session, the  
6 questioning or the attorneys.

7 Q. Okay. So moving closer to trial and now  
8 asking more specific questions about the Javier  
9 Molina and other charges in this case?

10 A. Like a laser focus on events, yes.

11 Q. Now, in terms of dismantlement of the  
12 gang, I think you said we used Gerald Archuleta as  
13 an example, number 10. So in addition to  
14 prosecution of Gerald Archuleta, then what impact  
15 does that have to have someone like him cooperating  
16 and out of the gang?

17 A. Well, it's just hugely demoralizing for  
18 the gang. A lot of the guys I talked to didn't  
19 believe me. I had to actually play recordings of  
20 him talking to me before they'd even believe that he  
21 would talk to us.

22 Q. And is it fair to say from the testimony  
23 we heard in court that for a long period of time he  
24 was an influential member of the SNM?

25 A. Yes.

1 Q. And once again referencing the testimony  
2 in this case, can he ever, in your opinion, be an  
3 influential member of the SNM Gang?

4 A. No, not any gang.

5 Q. Is that based on his cooperation?

6 A. Yes.

7 Q. Now, going back to dismantlement of the  
8 gang, was part of that process the recruitment of  
9 confidential informants or what you referred to as  
10 confidential human sources?

11 A. Yes.

12 Q. At the beginning of this trial, you talked  
13 about using certain investigative techniques. Did  
14 we see some of those techniques in this trial?

15 A. Yes.

16 Q. And one example I want to ask you about is  
17 Mario Montoya, for example. Did you use a  
18 confidential human source to buy drugs from Mario  
19 Montoya?

20 A. Yes, Mario was a target when I started the  
21 case.

22 Q. And then after that, did he agree to  
23 cooperate?

24 A. Yes.

25 Q. Did that enable you to capture some of the

1 information regarding the Marcantel and Santistevan  
2 conspiracies?

3 A. Yes, it did.

4 Q. Also regarding people like Eric Duran and  
5 Mario Montoya, at some point in time did it become  
6 apparent that one of them was figuring out that the  
7 other one might be a confidential source?

8 A. Yes.

9 Q. Who was that person?

10 A. I think Duran figured it out first. I can  
11 explain why if you want, but I think Duran probably  
12 figured it out first.

13 Q. Do you know about how long it took before  
14 he figured that out?

15 A. It was toward the end of the conspiracy  
16 investigation.

17 Q. And did you do anything to try to throw  
18 him off the scent of Mario Montoya as a cooperator?

19 A. I did initially.

20 Q. How did you do that?

21 A. Well, I told him -- I pushed him toward  
22 choosing Mario. There were a couple of options for  
23 guys on the street that could have been used as the  
24 hit man on the street, if you will. I wanted Mario  
25 because he was cooperating.

1           So I told Duran that we were tracking  
2 Mario and that we had a wiretap on his phone, which  
3 was true. But I made it sound like it was more of  
4 an unknown to Mario that we were tracking him, and I  
5 represented that to Duran.

6           Q.    Some of the witnesses in this case have  
7 talked about the witness protection program. Do you  
8 know it by any other names?

9           A.    That's what Hollywood calls it. It's  
10 actually Witness Security or WITSEC, but I do know a  
11 little bit about the program.

12          Q.    And have you had discussions with some of  
13 the cooperators about this being a potential option  
14 for them?

15          A.    Yes.

16          Q.    At this point are any of the cooperators  
17 in that program?

18          A.    No.

19          Q.    And do you anticipate at some point that  
20 you may apply for them to enter that program?

21          A.    Yes, I anticipate applying for a few of  
22 them.

23          Q.    And for the cooperators who have to do  
24 prison time if they're in the program, is there a  
25 safer prison for them to go to?

1 A. Yes.

2 Q. Is that basically a prison for other  
3 people who have cooperated?

4 A. Correct.

5 Q. A few of them mentioned getting things  
6 like new identities and money and cars and things of  
7 that nature. What's your understanding of what --  
8 how that works when someone is not in a secure  
9 facility but then is on the streets into the  
10 program?

11 A. Yeah, those are all things that are  
12 available as part of the Witness Security program.  
13 But that's not something I represent because the FBI  
14 doesn't run the program. That's not something I can  
15 control. I think a lot of that came from just what  
16 people see on the movies and stuff.

17 Q. Have you made representations to that  
18 effect, that they'll get houses and cars and things  
19 of that nature?

20 A. No. These are not the kind of guys you  
21 want to make fake promises to, they'll remember  
22 that.

23 Q. I want to talk to you about this meeting  
24 with Ronald Sanchez that was discussed here in  
25 court. Do you remember that?



1 A. Yes.

2 Q. Who requested that meeting?

3 A. Mr. Sanchez, Ronald Sanchez.

4 Q. Is that Daniel Sanchez's brother?

5 A. Yes.

6 Q. Did you eventually meet with Ronald  
7 Sanchez?

8 A. I did.

9 Q. Was anyone else at that meeting?

10 A. Yes, Mario Rodriguez, Agent Nancy Stemo.  
11 And at that time Task Force Officer Mark Myers, who  
12 was a corrections official, and Sergio Sapien of the  
13 STIU. He's a captain with the STIU over at PNM.

14 Q. Why was Mario Rodriguez present at this  
15 meeting with Ronald Sanchez?

16 A. My understanding was he wanted -- Ronald  
17 wanted him there.

18 Q. At that point was Mario Rodriguez already  
19 cooperating?

20 A. He was.

21 Q. And did Ronald Sanchez know that Mario  
22 Rodriguez was cooperating?

23 A. Yes.

24 Q. What questions did Ronald Sanchez have at  
25 that meeting?

1 MS. JACKS: Objection, hearsay.

2 THE COURT: Well, what is this being  
3 offered for?

4 MR. CASTELLANO: It's to lay the  
5 background of the meeting. And these are questions,  
6 not assertions, Your Honor. They would be  
7 nonhearsay.

8 THE COURT: Well, why don't you ask him  
9 first if he had questions. Let's lay a foundation.

10 MR. CASTELLANO: Sure.

11 MS. JACKS: And I'm also going to object  
12 based on relevance.

13 THE COURT: Is it necessary to get into  
14 all this to get the testimony you want from Mr.  
15 Acee?

16 MR. CASTELLANO: It is, Your Honor. I  
17 believe it was Mr. Sanchez's counsel who asked  
18 questions about this meeting, and he also introduced  
19 a letter that came out of this meeting. They  
20 actually moved some of this information into  
21 evidence.

22 THE COURT: All right. Well, let's do  
23 this. Let's ask him first a foundational question,  
24 whether he had questions, let me hear the answer to  
25 that. Then I'll decide how we're going to proceed

1 from there.

2 BY MR. CASTELLANO:

3 Q. Did Ronald Sanchez have questions at this  
4 meeting?

5 A. Yes.

6 Q. And the questions were in the nature of  
7 what topics?

8 THE COURT: Let's do this. If we're going  
9 to make them questions so they avoid hearsay,  
10 Mr. Acee can just relate what the questions are and  
11 nothing else.

12 MR. CASTELLANO: Sure, Your Honor.

13 BY MR. CASTELLANO:

14 Q. Okay. So you heard the Court's  
15 instructions. Let's stick to that. What -- one at  
16 a time, what were the questions that Ronald Sanchez  
17 had?

18 A. The first one was what could be done for  
19 his brother Daniel in terms of a plea agreement and  
20 sentence.

21 Q. Okay. What was the next one?

22 A. What could be done for Ronald and his --  
23 the state case he was serving. And the third  
24 question was -- it was a couple different questions,  
25 but it pertained to how could Ronald and Daniel do

1 their time together.

2 Q. And was there a clarification question  
3 about whether that would be in state or federal  
4 custody?

5 A. Both were discussed.

6 Q. And as a result of this meeting, then, did  
7 Mario Rodriguez write a letter to Daniel Sanchez?

8 A. He'd already written the letter because he  
9 gave it to me at the conclusion of the meeting, and  
10 so it was already written. There were two letters.

11 Q. What did you do with those letters?

12 A. I wasn't sure I could take them, so I  
13 called Ms. Armijo and I asked her what I should do  
14 with the letters.

15 Q. And what happened to those letters?

16 A. I delivered them to your office and I  
17 believe Ms. Armijo sent them to -- the letters were  
18 addressed to two people that had attorneys, and  
19 that's why I hesitated in taking them.

20 So Ms. Armijo caused those letters to be  
21 sent to the attorneys representing the defendants  
22 that the letters were addressed to, if that makes  
23 sense.

24 Q. Who were those letters addressed to?

25 A. Daniel Sanchez and Sergio Rodriguez,

1 Churro, who is a defendant in another case.

2 Q. Do you know what the general intent or  
3 purpose was in those letters?

4 A. Yes.

5 Q. What was the intent or the purpose?

6 MS. JACKS: Objection, calls for hearsay.

7 THE COURT: Well, I think probably given  
8 the contents of the other letters, would be -- would  
9 be, so I'll sustain.

10 MR. CASTELLANO: I don't recall, Your  
11 Honor, was one of those letters moved into evidence?

12 THE COURT: If that's the case, then you  
13 can discuss those. But we probably need to be  
14 reminded which ones you're referring to.

15 MR. CASTELLANO: I don't have the defense  
16 exhibit, Your Honor. If the defense could provide  
17 that, I'd be happy to show it to Agent Acee.

18 MS. JACKS: I'm actually looking for that  
19 now. My recollection is that he was asked questions  
20 but I don't believe the letter itself was admitted.

21 THE COURT: Is it a defendants' exhibit?

22 MS. JACKS: It is.

23 THE COURT: Do you have any objection to  
24 moving it into evidence?

25 MS. JACKS: If it's not in evidence, I'm

1 not moving it in now.

2 THE COURT: Then you would oppose the  
3 Government doing so?

4 MS. JACKS: If it's not already been  
5 admitted, yes.

6 MR. CASTELLANO: I move its admission at  
7 this time, Your Honor.

8 THE COURT: Well, I probably don't have  
9 any basis for admitting it, so I won't admit it.  
10 It's in evidence. Do you know, Ms. Jacks, what the  
11 number -- what the letter is?

12 MS. JACKS: Your Honor, that's what I'm  
13 looking for right now. Obviously I didn't get a  
14 preview of what this line of questioning would be,  
15 so I don't have it at my fingertips. I can get it  
16 in the next few minutes.

17 Q. At the time of this meeting, was Ronald  
18 Sanchez still in prison?

19 A. Yes.

20 BY MR. CASTELLANO:

21 Q. And was that meeting recorded and was  
22 there a transcript prepared of that meeting?

23 A. Yes to both.

24 MR. CASTELLANO: Your Honor, it's Bates  
25 51520. May have a moment, Your Honor? I'll check

1 with our paralegal.

2 THE COURT: You may.

3 MS. JACKS: According to the transcript,  
4 Your Honor, the exhibit is F as in Frank, C as in  
5 cat.

6 THE COURT: It was not admitted?

7 MS. JACKS: My recollection, and I'm  
8 looking at the transcript, is that Mr. Rodriguez was  
9 questioned about the content of the letter but the  
10 letter itself was not offered into evidence.

11 MR. CASTELLANO: Okay. So it seems, Your  
12 Honor, is that some of the content of that letter  
13 then is part of the evidence.

14 MS. JACKS: Correct. It was the P.S.

15 THE COURT: Well, unless you can explain  
16 some basis for admitting it, I don't think it can be  
17 admitted.

18 MR. CASTELLANO: We'd move it under the  
19 rule of completeness, Your Honor.

20 THE COURT: I'll deny the admission.

21 BY MR. CASTELLANO:

22 Q. Agent Acee, once again, whose idea was  
23 this meeting?

24 A. Ronald Sanchez.

25 Q. Going back to meeting with other people

1 who were either targets of the investigation or  
2 defendants charged, did you ever threaten anybody  
3 with the death penalty?

4 A. No.

5 MR. CASTELLANO: Your Honor, I pass the  
6 witness.

7 THE COURT: Thank you, Mr. Castellano.  
8 Cross-examination of Mr. Acee, Mr. Lowry?

9 MR. LOWRY: Yes, Your Honor. Could we  
10 approach briefly?

11 THE COURT: You may.

12 (The following proceedings were held at  
13 the bench.)

14 MR. LOWRY: Your Honor, I'm happy to  
15 cross-examine him on the scope of what was just  
16 presented. Frankly, we would anticipate recalling  
17 him early next week in the defense case-in-chief and  
18 I'd rather pursue it that way, not to break up the  
19 State's case, and make our presentation more  
20 effective.

21 THE COURT: Any objection to that?

22 MR. CASTELLANO: I would ask the same  
23 thing, if we have direct examination, that they do  
24 it in their case.

25 MR. LOWRY: Okay.



1 THE COURT: So we have an agreement. Is  
2 that where all the other defendants are, as well?

3 MR. LOWRY: I believe so.

4 MS. JACKS: We're agreeable. We've  
5 actually had two witnesses sitting around for two  
6 days that we don't want to have to bring back next  
7 week, so we're prepared to go forward.

8 THE COURT: But there's no issues or  
9 problems with them calling Mr. Acee next week?

10 MR. CASTELLANO: I anticipate that's what  
11 we're going to do.

12 MR. MAYNARD: There may be.

13 MS. JACKS: That was just to cross-examine  
14 him on what is brought out and bring out additional  
15 information important for our case. It's prior  
16 statements and stuff like that.

17 MR. MAYNARD: There might be another issue  
18 coming up with -- Mr. Lowry wanted to get into about  
19 the --

20 MR. LOWRY: No, you're not going to.

21 MR. MAYNARD: Okay. I wanted to protect  
22 Mr. Herrera's situation.

23 THE COURT: Do y'all feel you have an  
24 agreement?

25 MS. JACKS: I think so. So what we'll do

1 now is reserve the cross.

2 THE COURT: And would you rest and go  
3 forward?

4 MR. CASTELLANO: I think you just call him  
5 as a witness, as long as --

6 THE COURT: I'll just ask, "Any cross,"  
7 and y'all can say no.

8 MS. FOX-YOUNG: We'll say we reserve it,  
9 Your Honor.

10 THE COURT: Say whatever you want.

11 MS. JACKS: All right.

12 THE COURT: Work for you?

13 MR. CASTELLANO: Yes, Your Honor. I think  
14 we're about to rest. I'd ask the Court for a  
15 ten-minute recess just to make sure we check our  
16 exhibits and make sure we haven't missed anything.

17 THE COURT: What if we did this for the  
18 defendants? They can go ahead and rest and check  
19 the exhibits afterwards. If there is some  
20 discrepancy between my list and Ms. Standridge's  
21 list, and then the list the Government has, can  
22 everybody agree that they can just reopen if  
23 necessary to correct any exhibits?

24 MS. JACKS: I agree.

25 MR. CASTELLANO: Agreed, Your Honor.

1 MS. JACKS: And in terms of a Rule 29  
2 motion, can we do those after the jury is gone?

3 THE COURT: What I was thinking about  
4 doing, and asking to reserve, this is after y'all  
5 say no more cross, you go ahead and rest. I'll do  
6 my statement about the exhibits and then send them  
7 out. And if y'all need to make motions, you can.  
8 And it sounds like you've got a couple of witnesses.  
9 You can probably make your motion as long or short  
10 as you want, we'll bring them back and start with  
11 your two witnesses. Sound good?

12 MS. JACKS: Yes.

13 MR. LOWRY: Yes, sir.

14 (The following proceedings were held in  
15 open court.)

16 THE COURT: All right. Do the defendants  
17 have cross-examination of Mr. Acee at this time?

18 MS. JACKS: Your Honor, based on our  
19 discussion at the bench, we're going to reserve that  
20 and recall Mr. Acee during our case next week.

21 THE COURT: All right. Is that where all  
22 the other defendants are as well?

23 ALL: Yes, Your Honor.

24 THE COURT: All right. Mr. Acee, you may  
25 step down. Thank you for your testimony.

1 February 26, 2018

2

3 MR. LOWRY: Your Honor, the defense would  
4 call Bryan Acee to the stand.

5 THE COURT: All right. Mr. Acee, if  
6 you'll return to the stand, I'll remind you that  
7 you're still under oath.

8 Mr. Lowry.

9 MR. LOWRY: May it please the Court.

10 BRYAN ACEE,  
11 after having been first duly sworn under oath,  
12 was questioned and testified as follows:

13 EXAMINATION

14 BY MR. LOWRY:

15 Q. Good morning, Agent Acee.

16 A. Good morning.

17 Q. Agent Acee, I just want to follow up on  
18 that last testimony we heard, real quickly. You've  
19 participated in undercover operations, haven't you?

20 A. Yes, sir.

21 Q. And you know what it's like to have  
22 family?

23 A. I do.

24 Q. And you know what it's like to cherish  
25 your children?

1 A. Yes, sir.

2 Q. If you were involved in an undercover  
3 operation, and say you were working with a fellow  
4 agent that had children --

5 A. Yes, sir.

6 Q. Would you tell the targets of your  
7 investigation -- let's say -- let me back up for a  
8 second. You've investigated other drug  
9 organizations?

10 A. Yes, sir.

11 Q. You're an expert in the Juarez Cartel,  
12 correct?

13 A. Yes.

14 Q. So if you were employed, and you were  
15 interfacing with the Juarez Cartel, would you share  
16 the personal home address, license plate number of a  
17 fellow FBI agent with the cartel?

18 A. No, sir.

19 Q. You wouldn't think that that would be in  
20 the line of duty as your role as an undercover  
21 agent, would you?

22 A. No. I think that would be a terrible  
23 thing to do.

24 Q. Now, I want to talk to you about your  
25 relationship with Eric Duran. Can you pull up AE1.

1 And you know this to be Eric Duran, correct?

2 A. Yes.

3 Q. You didn't sign Mr. Duran up as a  
4 confidential human source of information, did you?

5 A. No, sir.

6 Q. But you inherited him as a source of  
7 information?

8 A. That's right.

9 Q. And that transfer probably happened in  
10 August 5, 2015?

11 A. Yes.

12 Q. And at the time of that transfer, you  
13 wrote a report detailing the transfer and your  
14 impressions of Mr. Duran?

15 A. I'd call it just my first debrief.

16 Q. Okay. But your report indicated that  
17 Mr. Duran was -- well, your report indicated that my  
18 client, Anthony Ray Baca, was eager to kill the  
19 Secretary of Corrections, Gregg Marcantel?

20 A. Yes, sir.

21 Q. And that's what you believed at that time,  
22 correct?

23 A. Well, that's what Mr. Duran told me, so  
24 that's what I wrote down.

25 Q. Now, in follow-up on that investigation,

1 you had Duran record Mr. Baca at Level 6 in Santa  
2 Fe, correct?

3 A. Yes, sir.

4 Q. And as part of that, as signing him up,  
5 you give him certain admonishments, correct?

6 A. Yes, sir.

7 Q. But you really didn't give him much in the  
8 way of instruction on how to use the recording  
9 device?

10 MR. CASTELLANO: Objection to leading  
11 questions on direct, Your Honor.

12 THE COURT: Overruled.

13 A. I didn't give him a tremendous amount of  
14 instruction, no.

15 Q. But the one instruction you did give him  
16 is that -- and we're talking about the recorded  
17 conversations, and I'll quote you from a pretrial  
18 hearing: "If it's not recorded, the conversation,  
19 in my mind, didn't happen."

20 A. I often say that, yes.

21 Q. But that was an instruction you gave to  
22 Mr. Duran?

23 A. I believe so.

24 Q. Because you wanted him to tape Mr. Baca  
25 and others about what you perceived to be their

1 criminal activities?

2 A. Yes, sir.

3 Q. And you also testified -- you've testified  
4 a number of times in this case, have you not?

5 A. I have.

6 Q. Probably too many to count at this point?

7 A. A lot of hours, yes.

8 Q. And on a different occasion under oath,  
9 you testified that you instructed Mr. Duran, quote:  
10 "If the informant tells me a conversation happened  
11 and it's not there, then they're going to have to do  
12 it over. They don't get credit for it, or we don't  
13 use it in terms of asking for prosecution."

14 Is that right?

15 A. Yes, that's generally what happens.

16 Q. And that's what -- I mean, you told this  
17 Court that under oath?

18 A. Yes, sir.

19 Q. Now, you were responsible for  
20 strategically placing my client, Mr. Baca, next to  
21 Mr. Duran in October of 2015?

22 A. Ultimately, Corrections did it, but at my  
23 request, yes.

24 Q. Right. And actually, the whole setup when  
25 Mr. Baca returned to New Mexico from Colorado was a



1 strategic placement on your part?

2 A. Yes, sir.

3 Q. And you had Mr. Baca in the cell next to  
4 Eric Duran?

5 A. Yes.

6 Q. And you had Roy Martinez very close by?

7 A. I don't remember that. I didn't make that  
8 request. I do believe he was in the same area.

9 Q. Right. But the purpose was so Mr. Duran  
10 could record Mr. Baca?

11 A. That was my primary objective, yes.

12 Q. And he did record Mr. Baca?

13 A. Yes, sir.

14 Q. But the initial recordings in October of  
15 2015 didn't reveal any desire on Mr. Baca's part to  
16 murder the Secretary of Corrections, did they?

17 A. I don't believe they did.

18 Q. And, in fact, it took well into November  
19 for Mr. -- well, are you aware of any recording  
20 where Mr. Baca says affirmatively, "I want to kill  
21 the Secretary of Corrections"?

22 A. Not in those exact words.

23 Q. And, in fact, all of the summaries of the  
24 conversations that the FBI developed for you to  
25 review, they really don't indicate that kind of

1 affirmative declaration on behalf of Mr. Baca?

2 A. I think they demonstrate that he does want  
3 to kill Mr. Marcantel. Not in the exact phrase you  
4 used, though.

5 Q. But that was much later on into November?

6 A. Into November, yes.

7 Q. And during the pretrial hearings, again,  
8 you've testified a number of times; correct?

9 A. Yes, sir.

10 Q. Each time, you took the oath of a witness  
11 to tell the truth?

12 A. Yes, sir.

13 Q. And in prior testimony you've agreed that  
14 Mr. Duran was a skilled manipulator?

15 A. I think he is.

16 Q. And you've said that he has, I think in  
17 your words, "the gift of gab"?

18 A. Did I say that?

19 Q. Yes, you did.

20 A. Okay.

21 Q. Would you like to see the transcript?

22 A. No. I believe you. He's a talker, I  
23 agree.

24 Q. You also testified at pretrial hearings  
25 that any indication that this conspiracy to murder

1 the Secretary of Corrections wasn't captured until  
2 after Mr. Duran disclosed to Mr. Baca that he had a  
3 cellular telephone?

4 A. I guess the answer is "Yes." I mean, he  
5 had the recording device and the phone at the same  
6 time.

7 Q. But do you recall that testimony where you  
8 said that anything that was captured was captured  
9 after the cellphone?

10 A. How else would we capture it? Yeah, I  
11 guess that's true.

12 Q. Well, you had an electronic ELSUR device,  
13 right?

14 A. Yes. They were introduced at the same  
15 time.

16 Q. Right. But in theory you could -- well,  
17 let me back up for a second. Mr. Duran didn't  
18 reveal that he had a cellphone to Mr. Baca until  
19 much later, correct?

20 A. I don't know that that's true.

21 Q. Do you recall exchanging text messages  
22 with Mr. Duran, where Mr. Duran asked you if he  
23 could let Mr. Baca know that he had a cellphone?

24 A. I don't recall texting about that, no.

25 MR. LOWRY: May I approach, Your Honor?

1 THE COURT: You may.

2 A. Thank you.

3 Q. Does that refresh your recollection?

4 A. Yes.

5 MR. LOWRY: May I approach?

6 THE COURT: You may.

7 Q. Now, the intercepts. You were responsible  
8 for getting the intercepts on the phone to capture  
9 the text messages?

10 A. Yes, sir.

11 Q. And the intercepts captured the date and  
12 the time and the content of the text messages back  
13 and forth?

14 A. Yes.

15 Q. And it's fair to say that on November 3,  
16 2015, Mr. Duran asked you if he could tell Mr. Baca  
17 that he had a cellphone?

18 A. Yes.

19 Q. And that you responded affirmatively and  
20 you said, "Let's do it. We'll be all over the  
21 streets"?

22 A. Yes, sir.

23 Q. And that response from you was on November  
24 4, 2015, at approximately 8:15 a.m.?

25 A. Yes.

1 Q. So up until November 4th, Mr. Baca wasn't  
2 aware that Mr. Duran had a cellphone?

3 A. That's correct.

4 Q. And so between October 22nd, when Mr. Baca  
5 arrived at the North facility, and November 4, 2015,  
6 any recording that Mr. Duran obtained was obtained  
7 using solely the ELSUR device?

8 A. I think he arrived October 24th. But  
9 you're correct.

10 Q. Well, we could go back and look, but --

11 A. I don't need to argue that point. I'll  
12 take your representation, sir. I thought he arrived  
13 the 24th.

14 Q. Would it refresh your recollection if you  
15 looked at the HAWK data report?

16 A. Well, does that tell us that he recorded  
17 Baca earlier than the 24th?

18 Q. Yes, sir.

19 A. Yes, sir.

20 MR. LOWRY: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. Now, Mr. Acee, it's fair to say that this  
23 is an electronic report that captured all the  
24 information when Mr. Duran used a covert electronic  
25 recording device with Mr. Baca?

1 A. Yes.

2 Q. And the first recording indicated on here  
3 is October 22, 2015?

4 A. Yes.

5 Q. And it's approximately -- it's 19:29  
6 hours, so that's what? 7:30 p.m.?

7 A. Yes, sir.

8 Q. So that would indicate when Mr. Baca  
9 arrived sometime on the 22nd?

10 A. It indicates that Duran started recording  
11 on the 22nd.

12 Q. All right. But Mr. Baca had to be in the  
13 building for him to record him with the covert  
14 electronic device?

15 A. That makes sense.

16 Q. And so there were at least 13 days  
17 transpired between the 22nd, when he arrived, and  
18 November 2nd, when this cellphone activity is  
19 engaged?

20 A. Yes.

21 Q. And I believe you agreed with me earlier  
22 on that during that period of time there was no  
23 indication whatsoever that Mr. Baca wanted to kill  
24 the Secretary of Corrections?

25 A. There is no recorded information.

1 Q. Right. And according to your instructions  
2 to Mr. Duran, if it wasn't recorded, it didn't  
3 happen?

4 A. Correct.

5 Q. Now, when I asked you at the pretrial  
6 hearings, you indicated in sworn testimony that it  
7 took six to eight weeks for Mr. Baca to open up with  
8 Mr. Duran about his plans?

9 A. Again, I'll take your representation, but  
10 I don't remember saying that.

11 Q. Would you like to see the transcript?

12 A. Sure.

13 MR. LOWRY: May I approach, Your Honor?

14 THE COURT: You may.

15 A. Okay. Thank you.

16 Q. Does that refresh your recollection, Agent  
17 Acee, that that was your testimony, that Duran eased  
18 his way into the conversation over a six- to eight-  
19 week period?

20 A. Yes, sir.

21 Q. Pardon me?

22 A. Yes, sir.

23 Q. And when you were at the hearing  
24 testifying under oath, you were doing your best to  
25 give us the truth?

1 A. I always do, sir.

2 Q. Okay. And that's part of your duties as a  
3 sworn FBI agent?

4 A. Yes, sir.

5 Q. The reason I ask, Agent Acee, is because  
6 I'm a little flummoxed, because your Grand Jury  
7 testimony in this case indicated that Mr. Baca, upon  
8 his return to New Mexico, within 48 hours expressed  
9 the desire to kill the Secretary of Corrections. Do  
10 you recall that testimony?

11 A. You'd have to refresh my memory.

12 Q. Sure. Do you recall testifying in front  
13 of the Grand Jury on December 1, 2015?

14 A. Yes, sir.

15 MR. LOWRY: May I approach, Your Honor?

16 THE COURT: You may.

17 A. Do you want me to turn the page, or is  
18 it --

19 Q. No, I just want you to refresh your  
20 recollection. Please read it.

21 A. Just what you've highlighted, sir?

22 Q. Yes.

23 A. Okay.

24 Q. So if that testimony is correct, you said  
25 immediately upon his return --



1           A.     I was asked the question, "Upon his  
2     return, did he immediately start putting out hits?"  
3     And my answer was, "Yes."

4                     And I stand by that as I sit here today.  
5     I didn't see any reference to 48 hours or anything  
6     like that.

7           Q.     Bear with me. I'll get to that one.

8                     MR. LOWRY: May I approach, Your Honor?

9                     THE COURT: You may.

10          A.     Okay. Thank you.

11          Q.     So you would agree with me that was your  
12     testimony to the Grand Jury, that as soon as Mr.  
13     Baca got back, within I think the first 48 hours he  
14     renewed the order to hit Marcantel?

15          A.     Yes, sir.

16          Q.     And so both "immediately" and "48 hours"  
17     is much sooner than the 13 or two weeks between the  
18     22nd and the 4th. Would you agree with me?

19          A.     I do agree with your question about the  
20     timeliness of this, but I also mentioned the other  
21     people that he renewed or that he talked about  
22     hitting. I mentioned Santistevan and Vigil. And I  
23     think he did talk about Santistevan before  
24     Marcantel.

25          Q.     Right. But in the exhibit I just showed

1 you, you say he renewed the order to hit Marcantel?

2 A. I think. Is that in there?

3 Q. I think.

4 A. Yes. I did say that, yes.

5 Q. But according to your directions to  
6 Mr. Duran, you didn't have any recording indicating  
7 that?

8 A. Not within 48 hours, no. It wasn't until  
9 in November, as you pointed out earlier.

10 Q. Okay. So did you get the 48 hours -- I  
11 mean, is that something Eric Duran told you?

12 A. Well, Duran would give me updates, yes,  
13 but I tried to rely more on the recordings. I put  
14 more emphasis on what was actually recorded.

15 Q. You did more than that. You actually  
16 affirmatively told everyone that if it wasn't  
17 recorded, it didn't happen?

18 A. Well, I often tell the informants that,  
19 yeah. It's important that they get recordings. I  
20 want to emphasize that with the informants in any  
21 case.

22 Q. But when you were in front of the Grand  
23 Jury, you didn't have any recording that that had  
24 happened?

25 A. Regarding Marcantel, no.

1 Q. But nonetheless, that was your testimony  
2 to the Grand Jury, that that had happened with  
3 regard to Marcantel?

4 A. I said I thought that that had happened.

5 Q. Now, unlike a situation today where we  
6 have a full Court, or even a pretrial hearing, at a  
7 Grand Jury, the only people there are yourself and  
8 the prosecutors and authorized staff like the court  
9 reporter, correct?

10 A. Yes, sir.

11 Q. So nobody else is in the room to correct  
12 testimony that could be off?

13 A. Like an adversarial?

14 Q. Correct.

15 A. No.

16 Q. You're placed under the same oath that you  
17 are today, to be honest with the Grand Jury?

18 A. Yes, sir. As soon as you walk in, you're  
19 placed under oath.

20 Q. Now, I want to talk about sort of your  
21 comments -- well, your testimony last week when we  
22 left off. You've heard all the testimony in this  
23 case? Well, most of it?

24 A. I have, sir.

25 Q. And you testified that initial debriefs

1 with an informant, it's a 30,000-foot view, correct?

2 A. Yes, sir.

3 Q. And you testified that you might not get  
4 all of the information relevant to what you're  
5 looking for in that initial debrief?

6 A. I think I almost never do in the initial  
7 one.

8 Q. But it's fair to say in your initial  
9 debriefs, you know what you're looking for?

10 A. Yes.

11 Q. And you ask the individual about what  
12 you're looking for?

13 A. Well, I don't always know what they know,  
14 so I want to make that distinction. I'm trying to  
15 gauge how much. In the context of the SNM, there is  
16 30-plus years of stuff I was looking at. So I know  
17 the overview of what I want to ask, but to really  
18 drill down on it, it takes a little longer.

19 Q. Right. But in the context of those 30  
20 years of FBI investigation, it's fair to say that  
21 until this conspiracy to murder the Secretary of  
22 Corrections, no FBI agent had been successful at  
23 convincing the Department of Justice to mount a RICO  
24 prosecution?

25 A. That's true.

1 Q. Because it was tried in 2009, and it was  
2 rejected by the U.S. Attorney's Office, wasn't it?

3 A. Did they want a RICO? I think they were  
4 just charging -- trying to charge for a specific  
5 couple of homicides.

6 Q. But the point being, the Department of  
7 Justice turned it down?

8 A. The United States Attorney's Office for  
9 the District of New Mexico turned it down.

10 Q. That's part of the Department of Justice,  
11 is it not?

12 A. It is.

13 Q. Now, you, from the very beginning of this  
14 case, based on what Mr. Duran was telling you, were  
15 focused on this Marcantel conspiracy?

16 A. It was one of many areas, yes.

17 Q. And it was a primary area, was it not?

18 A. It was a very important area.

19 Q. In fact, it was so important, Mr. Duran  
20 got lump sum awards for purportedly saving the  
21 secretary's life?

22 A. He did receive those from the Department  
23 of Corrections.

24 Q. So, I mean, that's sort of an indication  
25 of the value that law enforcement put on the case?

1           A.     That the Department of Corrections put on  
2     it, yes.

3           Q.     And you asked about the Marcantel  
4     conspiracy every time you debriefed an individual  
5     that came to you that knew about the SNM?

6           A.     I often did. I mean, I've debriefed  
7     between 50 and 100 SNM members. You know, guys  
8     getting out of the federal prison I don't typically  
9     ask because I don't think they know anything. But I  
10    would ask that question a lot of people that I think  
11    might know about it.

12          Q.     And I know you weren't at Mr. Duran's  
13    February 19, 2015, initial interview with the FBI  
14    agent that landed him, but have you looked at the  
15    transcript of that conversation?

16          A.     I have.

17          Q.     And even then, the FBI asked Mr. Duran  
18    about Mr. Marcantel?

19          A.     Correct.

20          Q.     And at that point in time, Mr. Duran said  
21    he didn't know anything about a hit on the  
22    secretary?

23          A.     I believe that's correct.

24          Q.     Even other individuals like Roy Martinez,  
25    who has testified before this jury, his first

1 interview with you, he said that it was Eric Duran  
2 that approached him about killing Santistevan, not  
3 vice versa?

4 A. I don't recall that.

5 Q. Okay. Do you recall meeting with Roy Paul  
6 Martinez on December 17, 2015?

7 A. You'd have to refresh my memory.

8 Q. Sure.

9 MR. LOWRY: May I approach, Your Honor?

10 THE COURT: You may.

11 A. These aren't my writing. But I'm happy to  
12 review it. These are another agent's notes. Would  
13 you like me to review?

14 Q. Sure. Do you recognize the writing?

15 A. I think it's Agent Sainato. Did I guess  
16 correctly? The 302 should indicate who --

17 Q. It's -- Sainato wrote the 302.

18 A. These are his notes, then.

19 Q. But you were at that debrief, correct?

20 A. Yes, sir.

21 Q. And is there anything in Agent Sainato's  
22 notes you would disagree with?

23 A. I assume that he took the notes as the  
24 conversation was happening, and that he would have  
25 accurately -- nothing jumps out at me. He would

1 have accurately written his notes.

2 MR. LOWRY: May I approach, Your Honor?

3 THE COURT: You may.

4 Q. You would agree that's Agent Sainato's  
5 present sense impression of the conversation?

6 A. Yes.

7 Q. And his impression -- I mean, it says  
8 "Marcantel hit." That's his -- that's the way he  
9 captioned it, correct?

10 MR. CASTELLANO: Objection. This is going  
11 to call for hearsay, Your Honor.

12 THE COURT: Are you trying to solicit  
13 these out-of-court statements?

14 MR. LOWRY: Your Honor, actually what I  
15 would like to do is show that the exculpatory  
16 information in the notes never made it into the  
17 formal report.

18 THE COURT: Well, I think I'd better  
19 instruct the jury that these statements that you're  
20 going to be referring to are not being offered for  
21 the truth of the matter; simply for the purpose of  
22 showing what statements got in what report.

23 So the jury will not consider these  
24 statements for the truth of the matter, but simply  
25 for purposes of determining what statements got into



1 what reports.

2 MR. CASTELLANO: I also object because  
3 it's hearsay within hearsay. This isn't Agent  
4 Acee's report. He's asking him to comment on  
5 another agent's report.

6 THE COURT: Whether it's hearsay or within  
7 hearsay, it's hearsay. You're not to consider it  
8 for the truth of the matter. You can only consider  
9 it for the purpose of whether they made it into the  
10 report. Mr. Lowry.

11 MR. LOWRY: Thank you, Your Honor. May I  
12 approach?

13 THE COURT: You may.

14 BY MR. LOWRY:

15 Q. Agent Acee, I gave you the 302 that goes  
16 along with those field notes, and take your time to  
17 review it. But my question is: Would you agree  
18 with me that the comment about Mr. Martinez being  
19 approached by Mr. Duran and asked to kill Dwayne  
20 Santistevan does not appear in the report?

21 A. Could you ask me that question again,  
22 please?

23 Q. Sure. The field notes indicate that Mr.  
24 Martinez was approached by Eric Duran, and Eric  
25 Duran asked him to kill Dwayne Santistevan?

1 A. I see what you're saying, sir, but I don't  
2 know if I agree with that.

3 Q. Okay. Well, do you mind reading the notes  
4 out loud?

5 A. Yes. Under "Marcantel hit"?

6 Q. Yes.

7 A. "Crazo approached Shadow saying Santi  
8 needed hit."

9 Q. Okay. So Eric Duran is Crazo?

10 A. Yes.

11 Q. Shadow is Mr. Martinez?

12 A. Correct.

13 Q. So Mr. Duran approached Mr. Martinez and  
14 said, "Santi" -- meaning Santistevan -- "needed to  
15 be hit"?

16 A. It does say that.

17 Q. Now, where is that notion reflected in the  
18 302?

19 A. The 302 doesn't reflect that sentence.

20 MR. LOWRY: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. Now, as the lead case agent, did you  
23 review the reports of the FBI agents that you work  
24 with?

25 A. The majority of the time. And at this

1 point in time, Agent Sainato is one of my agents  
2 assigned that I'm training, so I probably actually  
3 approved that report in the system, yes.

4 Q. But you would have approved that report,  
5 and you were there for the interview?

6 A. Yes, sir.

7 Q. So you know what was said?

8 A. Yes, sir.

9 Q. But you didn't think it important to  
10 include information that appeared to be, on its  
11 face, exculpatory?

12 A. To be clear, all exculpatory information  
13 should be included. I just hesitate because we're  
14 basing this on the way Sainato wrote a single  
15 sentence, and I don't know if it was said that way.

16 Q. Well, you were at the meeting?

17 A. I was at the meeting. My testimony is, I  
18 don't recall -- I was going to say Shadow -- Roy  
19 Martinez talking about that.

20 Q. That's essentially what Mr. Martinez  
21 testified to on the stand, that he was approached by  
22 Mr. Duran?

23 A. That may be the case, sir. Although I've  
24 been here, I wasn't here the day Mr. Roy Martinez  
25 testified.

1 Q. And I believe that was on a Friday.

2 A. Yeah, I had an inventory, a mandatory  
3 thing I had to be up in Albuquerque for.

4 Q. You weren't prepping Eric Duran  
5 downstairs?

6 A. No, sir. I was in Albuquerque.

7 Q. It's fair to say that the confidential  
8 human sources under your supervision, you instructed  
9 them what to do?

10 A. Well, in terms of the recording?

11 Q. Well, just in terms of -- I mean, not in  
12 every particular aspect of their daily life, but you  
13 would say: Here's what we're trying to accomplish;  
14 let's make it happen?

15 A. Yeah, I'd give them the marching orders,  
16 the objectives, whether it be in the prison or if we  
17 were doing buys on the street.

18 Q. Right. Now, on November 29th, I mean, you  
19 helped orchestrate the controlled buy of the pistol  
20 from Chris Garcia?

21 A. Yes. But that wasn't a buy, but yes. The  
22 undercover acquisition of it, yes.

23 Q. Fair enough. I apologize for using the  
24 wrong language. But yes, the acquisition of the  
25 weapon?

1 A. Yes.

2 Q. And during that time, I mean, you were  
3 concerned -- and I think you've testified about this  
4 in the pretrial hearings -- you were concerned  
5 because Christopher Garcia really didn't know what  
6 the gun was going to be used for?

7 A. Well, I don't know what he knew, but I  
8 know or had an idea what makes good evidence. And  
9 any time we pick up a firearm, you know, we're going  
10 to try to instruct the undercover agent or the  
11 informant to elicit statements about the gun.  
12 That's just good evidence.

13 Q. Right. But, again, you testified in front  
14 of the Grand Jury, and do you recall telling the  
15 Grand Jury that, you know, Baca called on Chris  
16 Garcia and told him, "Get guns, we've got a  
17 mission," but he didn't tell him what it was for?  
18 And while Chris Garcia is a felon and he is  
19 prohibited from possessing firearms, for us to be  
20 able to go to the house and pick up guns wouldn't  
21 necessarily be fair to charge Garcia with  
22 racketeering because he didn't know what the guns  
23 were for?

24 A. Well, he knew they were for a mission, but  
25 I think what I'm saying there is, he didn't know who

1 the target was of the mission.

2 Q. Right. And that's why you had to  
3 affirmatively instruct Mario Montoya to tell him who  
4 the target was?

5 A. Yeah. I would want that information  
6 recorded, that Garcia -- I think it's good evidence.  
7 Garcia is acknowledging who it is and is still  
8 providing the gun.

9 Q. Right. But up until that point, it was  
10 your understanding Chris had no idea what the gun  
11 was for?

12 A. I'm not sure if it was; but either way, I  
13 would ask that that conversation, that the informant  
14 mention that.

15 Q. Well, you testified to the Grand Jury that  
16 Mr. Garcia didn't know what it was for?

17 A. Well, I want to clarify that I believe  
18 Mr. Garcia knew there was a mission. I don't know  
19 that he knew -- I didn't have information that  
20 Garcia at that time knew exactly whom was going to  
21 be the target, but that there was a mission to kill  
22 somebody.

23 Q. Right. But, I mean, what you told the  
24 Grand Jury was, and I'm quoting your testimony, "He  
25 didn't know what the guns were for"?

1 A. May I review that, sir?

2 Q. Absolutely.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Thank you.

6 Q. And because you were concerned about that,  
7 you instructed Mr. Montoya to tell him, right, what  
8 the gun was for?

9 A. In no uncertain terms, yes.

10 Q. Now, I want to move away from the  
11 Marcantel allegations to the Julian Romero. We're  
12 going to go backwards in time.

13 A. Okay.

14 Q. Now, you recall taking Mr. Romero to the  
15 Old Main to take a tour?

16 A. A tour, yes. I asked him to do a  
17 recording in which he described his history in the  
18 SNM and how the riot started. He turned 21 the  
19 first night of the riot. And I asked him to walk me  
20 around and explain that and the history of the SNM.

21 Q. And that was last March 31, 2017?

22 A. That sounds right.

23 Q. And even though you spent the better part  
24 of probably half a day with him, you didn't produce  
25 a 302 on that?

1 A. I don't think that's correct.

2 Q. Okay. And I could be wrong.

3 A. I think I did.

4 Q. Okay. But during that trip, you told Mr.  
5 Romero that Mr. Baca didn't want him killed?

6 A. Yes, that's my understanding.

7 Q. Right. And you told Mr. Baca that Lupe  
8 Urquizo wanted Julian Romero killed?

9 A. I haven't talked to Mr. Baca in a while.

10 Q. You told Mr. Romero? Pardon me.

11 A. Mr. Romero, yes.

12 Q. So on that trip, on the way home, you told  
13 Mr. Romero, "Lupe Urquizo was the one that wanted  
14 you dead"?

15 A. And some other guys, but that Baca just  
16 wanted him beat up. You're right.

17 Q. Right. And you said, "And Mario Rodriguez  
18 wanted him dead"?

19 A. I don't know if I said that, because Mario  
20 left. Mario was down there, but I think he got  
21 transferred before the actual assault.

22 Q. We can play the recording if you like.

23 A. I don't think you've ever lied to me, Mr.  
24 Lowry. If you're representing that that's what I  
25 said --



1 Q. I try not to.

2 A. -- I believe you.

3 THE COURT: Mr. Lowry, can we talk to the  
4 jurors and see when they want to take their lunch  
5 break?

6 MR. LOWRY: Absolutely, Your Honor.

7 THE COURT: Do y'all want to do like we  
8 did on Friday and take about a 15-minute break, and  
9 then go another hour and a half, and take a late  
10 lunch? Is everybody in agreement with that? It  
11 looks like everybody's hands are kind of going up.  
12 Does that work for the counsel and the parties?

13 All right. Why don't we take a 15-minute  
14 break. And the jury did come in a little bit later,  
15 so we'll do that.

16 All rise.

17 (The jury left the courtroom.)

18 THE COURT: All right. We'll be in recess  
19 for about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. Let's go on the  
22 record. While Ms. Standridge is bringing the jury  
23 in, let me continue to talk a little bit about this  
24 Count 8. I know it's Count 3, I think, in our  
25 current drafting.

1 But on Friday, the Court orally denied Mr.  
2 Baca's motion for a judgment of acquittal under Rule  
3 29 of the Federal Rules of Criminal Procedure as to  
4 Count 8, or Count 3 now in our current instructions.  
5 It's the conspiracy to commit assault resulting in  
6 serious bodily injury.

7 What I understood Mr. Baca to be arguing  
8 is that the uncontroverted evidence indicated that  
9 Mr. Romero did not actually suffer a serious bodily  
10 injury. And what the United States replied is that  
11 the Romero conspirators intended to inflict serious  
12 bodily injury to Mr. Romero, or perhaps to kill him.

13 And then the Court denied Mr. Baca's  
14 motion, reasoning that the intent of the  
15 conspirators and not the result of the actual  
16 assault provides the relevant inquiry.

17 Now, here is my concern, is that  
18 committing and conspiring to commit assault with  
19 intent to inflict serious bodily injury, I'm not  
20 sure it violates 28 USC Section 1959 of the VICAR  
21 statute. What VICAR prescribes, instead, is  
22 racketeering motivated -- and I'm going to quote the  
23 language of the statute. "Assaults" -- it says  
24 "assault," but put a plural on it. "Assaults" --  
25 and here's the key language -- "resulting in" --

1 that's the language I think we need to focus on --  
2 "resulting in serious bodily injury that also  
3 violates state or federal law." So that's right out  
4 of Section 1959(a).

5 Accordingly, my concern is that if the  
6 Court concludes that the evidence presented in the  
7 United States' case-in-chief would not permit a  
8 reasonable juror to infer that Julian Romero  
9 suffered serious bodily injury, then the Court needs  
10 to enter a judgment of acquittal on Count 8, which  
11 is Count 3 in our instructions.

12 Mr. Baca is charged with conspiring to  
13 commit assault resulting in serious bodily injury in  
14 violation of New Mexico law. But the details of New  
15 Mexico's assault statute I don't think determine the  
16 elements of that offense -- this is kind of an  
17 interesting area -- establishing that Mr. Baca  
18 violated VICAR by conspiring to commit assault  
19 resulting in serious bodily injury in violation of  
20 New Mexico law requires the United States to prove  
21 that, one, Mr. Baca's conduct constitutes generic  
22 conspiracy to commit assault resulting in serious  
23 bodily injury; and two, that Mr. Baca's conduct also  
24 violated New Mexico law.

25 So it looks like the jury is ready. I'll

1 give you some cites maybe before you go to lunch or  
2 after you get back from lunch, some cases that I'd  
3 like for you to look at and comment on.

4 But that's the language I'm sort of  
5 hanging up on. It's out of the federal statutes.  
6 So I'll give you some cites so that you can get a  
7 fuller sense of what I'm thinking.

8 All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Mr. Acee, I'll  
11 remind you, you're still under oath.

12 Mr. Lowry, if you wish to continue your  
13 direct examination of Mr. Acee, you may do so at  
14 this time.

15 MR. LOWRY: Thank you, Your Honor, I do.

16 THE COURT: Mr. Lowry.

17 BY MR. LOWRY:

18 Q. Agent Acee, we left off talking about the  
19 Julian Romero assault, and I just wanted to -- we  
20 were talking about your conversation with Mr. Romero  
21 on your way home from visiting Old Main, and the  
22 things you told Mr. Romero. You told Mr. Romero  
23 that it was the younger guys that wanted to kill Mr.  
24 Romero?

25 A. Yes.

1 Q. And that essentially Mr. Baca intervened  
2 and said: I don't want him killed. He can't be  
3 stabbed. If anything happens to him, you could beat  
4 him up, but that's it?

5 That's not exactly what he said. He said,  
6 and I'll quote, "He didn't want you to get hurt too  
7 bad"?

8 A. That sounds more like it, yes.

9 Q. So essentially, Mr. Baca was calling off  
10 the dogs, so to speak?

11 A. Calling it down.

12 Q. Because, again, this generational  
13 difference between the thinking, if you will?

14 A. I don't know what Mr. Baca's thinking was,  
15 but that's how it was related to me by at least one  
16 of the guys involved.

17 Q. And that was your understanding?

18 A. That was my understanding based on my  
19 conversation with him.

20 Q. Right. Now, I'm just more than idly  
21 curious, but when Mr. Urquizo was here, he testified  
22 that Mr. Baca ordered Mr. Romero to be killed?

23 A. Did he?

24 Q. Yes.

25 A. Okay. I thought it was someone else that

1 said that, Baby G, Jonathan Gomez.

2 Q. Well, bear with me for a second.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. Do you want me to read beyond the first  
6 page?

7 Q. If you care to. I just want you to be  
8 comfortable with the testimony.

9 A. Okay, sir.

10 Q. So did I understand his testimony to this  
11 Court and this jury correctly that when Mr. Urquizo  
12 testified, he said that he wanted -- that Mr. Baca  
13 had ordered Julian Romero to be killed?

14 A. Yes.

15 Q. But that's not what you understood?

16 A. No. And in that, that you just had me  
17 review, it looks like he's saying either he  
18 misstated it or we miss-recorded it, recorded it in  
19 our report.

20 Q. And that's what I was just getting ready  
21 to show you, your report of one of your interviews  
22 with him. This would be on March 6th. So you would  
23 have gone to visit Mr. Urquizo on the 24th. He  
24 says, "I need an attorney," and then that  
25 precipitated this initial debrief.

1 A. That time line sounds correct.

2 MR. LOWRY: May I approach, Your Honor?

3 THE COURT: You may.

4 A. Yes, sir.

5 Q. And this is where in his trial testimony  
6 he said -- he tried to blame you on -- my  
7 understanding was, he was trying to blame you on  
8 sloppy report writing, if you will?

9 A. No, that's not what I read.

10 Q. Okay. What did you read?

11 A. That either he made a mistake or we got  
12 the names wrong.

13 Q. Right. And -- but he certainly said in  
14 his trial testimony that Mr. Baca wanted to murder  
15 Mr. Romero?

16 A. Yes.

17 Q. And that's not what he told you on March  
18 6, 2017?

19 A. No, I don't believe that's what he told  
20 me.

21 Q. In fact, he told you the exact opposite?  
22 He told you the story, the same version of events  
23 that you told Mr. Romero?

24 A. Yes.

25 Q. Was the United States going to do anything

1 to correct Mr. Urquizo's testimony that Mr. Baca  
2 wanted Mr. Romero dead?

3 A. I don't know.

4 Q. Mr. Urquizo -- it's fair to say this  
5 report also, he makes a comment in his report, as  
6 you reported it. I want to move on from the Julian  
7 Romero thing, and actually this is going to be --  
8 while we're on Mr. Urquizo, I want to clean this up.

9 But Mr. Urquizo had informed you that when  
10 he initially got to the Southern facility here in  
11 Las Cruces, that he was communicating with Timothy  
12 Martinez and -- who was it? -- Mario Rodriguez, and  
13 they were communicating by holding up notes to a  
14 glass window.

15 Do you recall that?

16 A. I do recall him telling me about that.

17 Q. And you relied on those statements of Mr.  
18 Urquizo when you testified at the pretrial hearings,  
19 didn't you?

20 A. Yes.

21 Q. And you took the same seat you're sitting  
22 in today and testified under oath that when Mr.  
23 Urquizo got to Southern, he was trying to  
24 communicate with everyone by holding up notes to his  
25 cell door?



1           A.    I testified that that's what he  
2 represented to me, yes.

3                   MR. LOWRY: And can we get Government's  
4 Exhibit 162? It's that overview.

5           Q.    Are you familiar with this diagram by now?

6           A.    Yes.

7           Q.    And Mr. Urquizo's cell was right here? Do  
8 you recall?

9           A.    I don't.

10          Q.    Okay. Would you accept my representation  
11 that that was Mr. Urquizo's cell?

12          A.    Yes.

13          Q.    Okay. And this is the door, would be  
14 right here between the pods, that we've talked about  
15 repeatedly?

16          A.    Yes.

17          Q.    But what you testified at the pretrial  
18 hearing is that Mr. Urquizo was holding up notes to  
19 his door that Mr. Martinez and Mr. Rodriguez were  
20 reading out in the hallway?

21          A.    Correct.

22          Q.    And that Mr. Martinez and Mr. Rodriguez  
23 were out there cleaning or painting?

24          A.    Something like that.

25          Q.    Now, we've seen photographs of the pods.

1 I mean, do you honestly think that's possible, that  
2 anybody could have read a handwritten note from that  
3 distance?

4 A. It would be a pretty big note.

5 Q. And I think everybody would be reading it;  
6 correct?

7 A. I'm sorry?

8 Q. Everybody would be reading it, including  
9 the guards up here in the tower?

10 A. A note that big, yeah, I guess everybody  
11 would be able to see it.

12 Q. Right. So at this point in time, do you  
13 credit that idea?

14 MR. CASTELLANO: Objection, Your Honor.

15 THE COURT: Yeah.

16 MR. LOWRY: Fair enough. I'll withdraw  
17 the question, Your Honor.

18 Q. When Mr. Urquizo testified, he testified  
19 that didn't happen at all?

20 A. I thought he talked about communicating  
21 with those guys at the -- I don't know what door we  
22 want to call it, but the door, the entryway into the  
23 pod.

24 Q. Right. Both doors? This door here, and  
25 then this door here, correct?

1           A.     We've talked about those two doors, but I  
2     don't know if you want me to explain what my  
3     understanding was.

4           Q.     No. My question is this. Mr. Urquizo  
5     dropped all the pretense that he communicated to  
6     anybody by holding a note up to the window when he  
7     testified to this jury at this trial?

8           A.     I thought he testified about holding a  
9     note up at a different door, but I'm going off  
10    memory here.

11           MR. LOWRY: May I approach, Your Honor?

12           THE COURT: You may.

13           A.     I think I see what might be the problem.

14           Q.     Okay. Well, the problem was, he says  
15    nobody -- at trial, he says nobody is communicating  
16    with notes through a window, correct?

17           A.     He does say that.

18           MR. LOWRY: May I approach?

19           THE COURT: You may.

20           Q.     And he says that your report was wrong  
21    when it said that they were communicating with notes  
22    through the window?

23           A.     Yes.

24           Q.     I have more confidence in your report  
25    writing than Mr. Urquizo. Do you think you got it

1 wrong in your report?

2 A. I think I may have. I appreciate the  
3 confidence but, I mean, I do make errors, and I  
4 think I see the sentence in my report where it may  
5 be wrong.

6 Q. Okay. Which brings us to another issue  
7 that, you know, Ms. Armijo had even raised with the  
8 investigator, Mr. Filipiak. Why don't you record  
9 these interviews with these witnesses so everybody  
10 can understand what's being said?

11 A. Well, I like to. A lot of times the  
12 defense attorneys don't allow me to.

13 Q. Well, if they're there under your Kastigar  
14 letter, I mean, you can demand that you get to  
15 record, correct?

16 A. Can I? They're not my Kastigar letters.

17 Q. Well, fair enough. But the United States  
18 has the ability to record these conversations, does  
19 it not?

20 A. We have recording devices but, I mean,  
21 we're obviously at kind of the whim of the  
22 defendant's attorney.

23 Q. Were you aware that the defendants in this  
24 case wrote a letter to the Department of Justice,  
25 including the prosecutors in this case, asking that

1 all of the pretrial interviews be recorded?

2 A. I'm not sure.

3 MR. LOWRY: May I approach, Your Honor?

4 THE COURT: You may.

5 A. I wasn't aware of this. I only hesitate  
6 because it could have come up at a pretrial hearing  
7 that I was at, but I'm not part of this.

8 Q. But that letter actually requested the  
9 prosecutors in this case to alert you of the  
10 request, so I'm assuming from your testimony that  
11 did not happen?

12 A. So what is this letter, sir?

13 Q. It was a letter -- it was a formal request  
14 from the defense counsel in this case, asking that  
15 your pretrial interviews with witnesses in this case  
16 be audio-recorded so we don't have to have these  
17 debates about whether you could write a report  
18 correctly.

19 A. Okay. I don't know that I was part of any  
20 of those conversations.

21 Q. Okay. And my question to you is: Even  
22 though that letter asked for you to be notified  
23 about this request, what I'm understanding you to  
24 testify to is, you never heard about it?

25 A. I'm not sure I did, but I can represent

1 that I was not directed to do so.

2 Q. Okay. And when the United States is  
3 making charitable plea offers --

4 A. Charitable plea offers?

5 Q. -- charitable plea offers -- they get to  
6 set the terms, don't they?

7 A. I think there is some wrangling between  
8 the defense attorneys and the United States. I'm  
9 oftentimes not part of those meetings.

10 Q. But recording the interviews wouldn't be a  
11 big heartburn for anybody?

12 A. I don't typically record informant  
13 interviews. We're, in fact, kind of discouraged  
14 from doing that. A subject interview is different.

15 Q. Right. And, in fact, you emphatically  
16 told Mr. Duran you don't like being recorded?

17 A. As the agent in a wiretap, no, I don't.

18 Q. Right. And so it's your preference not to  
19 have an audio recording of you working with your  
20 agents?

21 A. In the operational context, no. I have no  
22 problem interviewing subject interviews, and usually  
23 do.

24 Q. But suffice it to say, you had the  
25 capability of recording these interviews?

1           A.     I have a couple recording devices in my  
2 bag all the time.

3           Q.     All the time?

4           A.     Yes.

5           Q.     Now, just moving on to the Molina count,  
6 which is the oldest counts, while we're on Mr.  
7 Urquizo, you were here when Mr. Urquizo testified  
8 that on the day he left PNM North to go to PNM  
9 South, he had a conversation with Mr. Baca through  
10 the window while he was in the rec yard?

11          A.     He was in the yard, and Mr. Baca was  
12 inside the facility.

13          Q.     Right.

14          A.     Yes.

15          Q.     You recall we had Mr. Urquizo mark this  
16 exhibit. These are his initials, that he had this  
17 conversation somewhere in this area over here?

18          A.     I remember that.

19          Q.     Okay. Now, if you recall correctly, he  
20 said that happened on the very last day he was  
21 there, before he went to the South facility at PNM?

22          A.     I don't remember that part, but I'll go  
23 with you on it.

24                 MS. ARMIJO: Your Honor, may we approach?

25                 THE COURT: You may.

1 (The following proceedings were held at the  
2 bench.)

3 THE COURT: This is an exhibit here?

4 MR. LOWRY: It's been admitted.

5 THE COURT: What is the number on it?

6 MR. LOWRY: EQ.

7 MS. ARMIJO: Your Honor, their medical  
8 expert doctor is here and is in the courtroom. And  
9 my understanding is -- I would understand if they  
10 had a medical expert testifying something with  
11 relationship to Rudy Perez. But the defense has  
12 been keeping others outside, and she hadn't been  
13 noticed for today.

14 THE COURT: Isn't she an expert?

15 MS. ARMIJO: She's medical, reviewing  
16 records.

17 THE COURT: She's not a factual witness?

18 MS. FOX-YOUNG: No, Your Honor, she's not.  
19 We alerted the Government she's an expert. She's  
20 not a treating physician at all.

21 THE COURT: Well, I can't remember. I  
22 think when the rule was invoked -- I can look at  
23 what I usually say, but I think I usually say  
24 experts can remain in the courtroom. So if she's a  
25 pure expert, I don't see any problem with her being



1 in the courtroom.

2 MS. ARMIJO: Thank you, Judge.

3 (The following proceedings were held in  
4 open court.)

5 THE COURT: For the record, this is EQ.

6 MS. JACKS: Your Honor, for the record,  
7 the area that Mr. Lowry was asking about appears to  
8 be marked Q in the photograph.

9 MR. LOWRY: That's correct.

10 BY MR. LOWRY:

11 Q. I'll set this up. If you recall, this is  
12 housing unit 3, and this is Q, R, S, T, U, V, W, X.  
13 You can faintly see the letters on the top, X, W, V,  
14 U, and it goes around in alphabetical order on the  
15 top of the buildings.

16 A. I just see the Q and the R.

17 Q. And that's what Mr. Urquizo handwrote on  
18 there?

19 A. Okay.

20 Q. Now, Mr. Acee, you testified in pretrial  
21 proceedings that you tried to corroborate people's  
22 story by working with the Department of Corrections  
23 to verify where they were at certain periods of  
24 time?

25 A. I have done that.

1 Q. And are you familiar with what we've  
2 looked at repeatedly, these prisoner location  
3 histories?

4 A. Yes, sir.

5 Q. And this has been previously marked, I  
6 think, as V24, and it's not been admitted. Pardon  
7 me. V29.

8 MR. LOWRY: May I approach, Your Honor?

9 THE COURT: You may be.

10 Q. I just wanted to verify the last day, the  
11 day he moved from PNM North to PNM South, would have  
12 been September 13, 2012, correct? We're looking at  
13 a photograph of the North facility. We're looking  
14 at a photograph of PNM North.

15 And the testimony was, on his last day at  
16 the North facility, when he transferred to the South  
17 facility, not to be confused with Southern, but PNM  
18 South Level 5 in Santa Fe, he had this conversation  
19 with Mr. Baca, and that he was in the rec yard,  
20 according to his testimony, and Mr. Baca was here in  
21 the Q pod.

22 A. Okay.

23 Q. Would you agree with me that the last day  
24 that Mr. Urquizo was here at the North facility was  
25 September 13, 2012?

1 A. Yes. For that year. It looks like he's  
2 at the North again in '14. But yes.

3 Q. So that was after -- he's back in the  
4 North, after the Molina murder?

5 A. Yes.

6 MR. LOWRY: May I approach, Your Honor?

7 THE COURT: You may.

8 Q. Let me show you what's been admitted into  
9 evidence as Defendants' Exhibit V4.

10 Now, if we look at this and locate -- it's  
11 fair to say on September 13, 2012, Mr. Baca is  
12 housed at the North 3A in the S unit, correct?

13 A. Yes, North 3A, Cell S101. Yes.

14 Q. So he's in the S pod?

15 A. That's what's indicated here.

16 Q. So he's not in the Q pod?

17 A. No. He's in the Q pod prior to that. I  
18 don't see the date because it's got the line through  
19 it.

20 Q. No, but my question is very specific. On  
21 this day that Mr. Urquizo testified that he is  
22 waving to Mr. Baca, saying goodbye, and Mr. Baca is  
23 housed in the Q pod, and he's having his rec time  
24 out here in the cage on his last day, which was  
25 September 12, September 13, 2012, that couldn't have

1 happened because Mr. Baca is housed in the S pod  
2 over here?

3 A. I agree. Mr. Baca is housed in the S pod.

4 Q. Now, the whole thing that starts off this  
5 paper trail is, according to the testimony this jury  
6 has heard, this hand-off of paperwork between Joe  
7 Martinez and David Calbert in the same facility,  
8 Level 6 in Santa Fe?

9 A. Yes.

10 Q. And Mr. Calbert described this paper being  
11 rolled up longways and placed in the rec cage yard;  
12 correct?

13 A. Yes.

14 Q. And as -- well, Mr. Martinez did that.  
15 And according to Mr. Calbert, he came by and grabbed  
16 it as he was cuffed behind his back?

17 A. Wasn't Calbert in the cage at the time?

18 Q. No, Calbert -- well, pardon me.

19 A. And Cheech was walking?

20 Q. That's how -- well, the paper goes,  
21 Cheech, according to the Government's theory, the  
22 paper goes Cheech, Calbert, Calbert, Urquizo,  
23 Urquizo to Southern; correct?

24 A. Yes, sir.

25 Q. So the paperwork gets to Calbert in the

1 rec yard?

2 A. Yes.

3 Q. And he says he's walking by the cage, he's  
4 handcuffed behind his back?

5 A. I thought Cheech was handcuffed and handed  
6 it to Calbert, who was in the rec cage. I may have  
7 misheard that, but I thought that's what I heard.

8 Q. My larger point is: Did you try to  
9 attempt to verify whether that meeting or that  
10 exchange was even possible?

11 A. I believe it is.

12 Q. Do the recreation sheets, where people  
13 sign out to go to the rec yard, verify that they  
14 were in the rec yard at the same time?

15 A. I don't know that any sheets like that  
16 exist.

17 Q. Did you ask to see if they existed?

18 A. Not in that specific circumstance, but in  
19 others, and there weren't.

20 Q. So you don't know? Because when we looked  
21 at the sheets for Southern, they very clearly  
22 demarcated when people went to rec and when they  
23 didn't.

24 A. It depends on the officer. But the ones  
25 that we looked at were very good. I was surprised.

1 Q. So, in your mind, it really depends on  
2 who's working the unit that day, of whether things  
3 are fairly documented?

4 A. Unfortunately, yes.

5 Q. Did you do anything to try to verify with  
6 the Department of Corrections that that meeting  
7 could have taken place as described by David  
8 Calbert?

9 A. Yes.

10 Q. What was that?

11 A. I asked officers what they thought of  
12 that; basically, if that was possible.

13 Q. And they just said generally it was  
14 possible?

15 A. Of course. I mean, the same guards can  
16 bring drugs in, or cellphones.

17 MR. LOWRY: May I have a moment, Your  
18 Honor?

19 THE COURT: You may.

20 MR. LOWRY: No further questions.

21 THE COURT: All right. Thank you, Mr.  
22 Lowry.

23 Ms. Fox-Young.

24 MS. FOX-YOUNG: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MS. FOX-YOUNG:

2 Q. Agent Acee, you are currently an FBI  
3 Special Agent?

4 A. Yes, ma'am.

5 Q. And you have worked in that capacity for  
6 about nine years; is that right?

7 A. Yes, ma'am.

8 Q. And before that, you were a police  
9 officer?

10 A. Yes.

11 Q. For how many years?

12 A. About 10.

13 Q. So would it be accurate to say that you've  
14 been trained in law enforcement practices for almost  
15 20 years?

16 A. Yes, ma'am.

17 Q. And as an officer, and as an FBI agent,  
18 you've been trained to be very thorough in  
19 documenting information in your investigations,  
20 right?

21 A. Yes.

22 Q. Maybe even more so in your work with the  
23 FBI than as a police officer?

24 A. I have become more thorough, yes.

25 Q. And you conducted a number of interviews

1 in this case; isn't that right?

2 A. I did.

3 Q. Can you quantify how many?

4 A. More than 50.

5 Q. Okay. And some of those interviews were  
6 also attended by other personnel from the FBI,  
7 right?

8 A. Yes.

9 Q. Including Agent Nancy Stemo?

10 A. Yes.

11 Q. And Agent Neale?

12 A. Thomas Neale.

13 Q. And Agent Roundy?

14 A. No.

15 Q. Roundy wasn't there?

16 A. No. Agent Sainato.

17 Q. Agent Sainato. And others, other  
18 personnel?

19 A. STIU, mostly.

20 Q. And as the jury has heard, on many  
21 occasions those interviews, prosecutors are present,  
22 right?

23 A. Yes.

24 Q. Not all of them?

25 A. Sometimes not the initial one, but usually



1 after that they are.

2 Q. And for each of these interviews that you  
3 conduct or attend, you take notes, right?

4 A. If I'm the primary interviewer, I do. If  
5 I'm not, I don't.

6 Q. Okay. And in the instance that you were  
7 discussing a little while ago, where Agent Sainato  
8 was the primary interviewer, those were his notes  
9 from that interview, right?

10 A. Yes, ma'am.

11 Q. So sometimes you take copious notes when  
12 you're the primary interviewer?

13 A. Sometimes, yes.

14 Q. And is it from those notes that you, as  
15 the primary interviewer, then develop what's called  
16 a 302 report?

17 A. It's from -- the notes are helpful.  
18 They're a reference, yes.

19 Q. So you use those notes as a reference.  
20 You don't have a recording, as you just testified,  
21 so you have to rely on the notes?

22 A. Sometimes I have a recording. Sometimes I  
23 have both.

24 Q. In this case, did you record some of those  
25 interviews?

1 A. Some interviews have been recorded, yes.

2 Q. Do you recall which ones?

3 A. Ma'am, I said I interviewed over 50  
4 people.

5 Q. If you don't recall, it's okay.

6 A. I don't. I can think of maybe a few off  
7 the top of my head, but I'd want some time to  
8 prepare something a little more accurate.

9 Q. And so you take the -- as the primary  
10 interviewer, you take your notes and you develop a  
11 302 report, and that report then is relied on by the  
12 prosecution, right?

13 A. Yes.

14 Q. It's relied on by the FBI?

15 A. It is.

16 Q. And in some instances, it's relied on by  
17 this Court, by Judge Browning?

18 A. Judge Browning has looked at some of our  
19 302s.

20 Q. And the information in your reports is  
21 relied on by this jury through the course of this  
22 trial, right, as it comes out in the testimony?

23 A. Yes.

24 Q. And so I want to ask you about a specific  
25 interview, one of the ones that I think you'll

1 recall conducting, and there has been testimony  
2 about it. I don't know if you testified about it.

3 Do you remember interviewing Robert Martinez in  
4 December 2015?

5 A. The SNM member? Or the ex-BCSO detective?

6 Q. Baby Rob. Do you remember that?

7 A. Yes.

8 Q. And I think you were in the courtroom  
9 earlier today when the prosecutor referred to him as  
10 a "big leader." Do you remember that?

11 A. I think he was a leader.

12 Q. Do you remember hearing her call him the  
13 "big leader"?

14 A. No.

15 Q. And would you consider him to be somebody  
16 who was influential in the organization?

17 A. Yes.

18 Q. Pretty high up?

19 A. Yes.

20 Q. And when you met with him, he prepared a  
21 61-page written statement for you, didn't he?

22 A. He did.

23 Q. You asked him to do that?

24 A. Yes.

25 Q. And that statement or the substance of

1 that statement ultimately became part of a report  
2 that you generated, right?

3 A. Did I?

4 Q. Do you remember that?

5 A. I remember that incident. I remember  
6 talking to him. Did I generate the report?

7 Q. Well, I'll show it to you, and you can see  
8 what you think.

9 MS. FOX-YOUNG: Your Honor, may I  
10 approach?

11 THE COURT: You may.

12 Q. Agent Acee, do you remember whether this  
13 report dated July 12, 2016, the December of 2015  
14 interview of Robert Martinez, is yours?

15 A. Yes and no. So the report is mine. I  
16 think it indicates I cut and paste in there, an  
17 intern transcribing it. Did I say that correctly?

18 Q. Okay. And I'm not trying to catch you in  
19 some sort of technicality. I just want to know if  
20 this is your report.

21 A. Yes, ma'am.

22 Q. And I know you have staff who work with  
23 you to help you complete these things. Do you  
24 remember that as part of that 61-page written  
25 statement from Baby Rob, there was provided to you

1 and the FBI a list of 167 individuals that Baby Rob  
2 said were in the SNM?

3 A. Yes.

4 Q. I don't expect you to recite all 167. I  
5 know you have a good memory, but I don't expect you  
6 to recite all the individuals today. But do you  
7 remember that list?

8 A. Yes.

9 Q. And you remember, do you not, that Rudy  
10 Perez is nowhere on that list?

11 A. I don't know.

12 Q. Do you want to take a look?

13 A. Sure.

14 MS. FOX-YOUNG: May I approach?

15 THE COURT: You may.

16 Q. If you'll just turn to the third page,  
17 that's where it starts. You can take your time.

18 A. I don't see his name listed.

19 Q. And why don't you just hold on to that  
20 document for a minute, Agent Acee. Do you remember  
21 that Baby Rob did include Mario Rodriguez on that  
22 list as a shot caller?

23 A. Yes.

24 Q. And you see that there today?

25 A. I do.

1 Q. And you remember that Baby Rob also  
2 included for you and the FBI's consideration Billy  
3 Cordova on that list?

4 MR. CASTELLANO: Your Honor, objection to  
5 hearsay at this point because these aren't prior  
6 inconsistent statements.

7 MS. FOX-YOUNG: Your Honor, Mario  
8 Rodriguez being a shot caller is impeachment of  
9 Mario Rodriguez's testimony.

10 THE COURT: Let me do this: What's in and  
11 out of these reports, I'll allow the jury to know  
12 what's in and out of those reports. But you can't  
13 consider these for the truth of the matter. These  
14 are only to determine why certain things were in  
15 reports and what wasn't in other reports in your  
16 determining the credibility of witnesses, but you  
17 can't consider these statements for the truth of the  
18 matter.

19 BY MS. FOX-YOUNG:

20 Q. Can you answer the question, Agent Acee?

21 A. Billy Cordova is listed.

22 Q. Okay. Thank you.

23 Just as a followup, you were in court when  
24 Baby Rob testified, right?

25 A. Yes, ma'am.

1 Q. You remember he never identified Rudy  
2 Perez at all? Do you recall that?

3 A. That sounds familiar.

4 Q. So let's talk about Mario Rodriguez. And  
5 you remember that Baby Rob identified him  
6 specifically as a shot caller to you, and you  
7 documented that in your report?

8 A. Yes. I think he did in his written  
9 statement we were talking about, yes.

10 Q. And that was then published in this FBI  
11 302?

12 A. Yes, ma'am.

13 Q. Let's take a look at Government's Exhibit  
14 586, and let's just pick up where you left off  
15 talking about Mario Rodriguez last Friday. It's  
16 been a few days.

17 I think you testified that in a meeting  
18 with Mario Rodriguez sometime in the last several  
19 months, you learned about some other shanks that he  
20 told you about, and I think you said they were at  
21 the North and South facilities?

22 A. Yes.

23 Q. And when you said the North and South  
24 facilities, did you mean in Santa Fe at PNM? Or did  
25 you mean in Santa Fe and also the Southern New

1 Mexico Correctional Facility?

2 A. Both were in Santa Fe at the PNM.

3 Q. Okay. And we're looking at a picture of  
4 Mario Rodriguez up here, Government's Exhibit 586?

5 A. Yes.

6 Q. So this is the same person that told you  
7 about the additional shanks?

8 A. Yes.

9 Q. Did he tell you if those were his shanks?

10 A. No, but I assumed they were.

11 Q. You assumed that they were and that he had  
12 hidden them, had secreted them somewhere in the  
13 North and South facilities?

14 A. Yes.

15 Q. Where were they actually recovered?

16 A. I wrote a report on it, and so did STIU.  
17 Off the top of my head, I think one was in a heating  
18 vent. Is that what you're asking me, where  
19 specifically?

20 Q. Exactly.

21 A. They were difficult to locate. I think  
22 one was in a heating vent, some kind of crevice.  
23 And the other was inside a bed mattress. And that's  
24 why I assumed they were his, because he knew where  
25 they were.



1 Q. And what were they made of, if you know?

2 A. They were either Plexiglas or metal.

3 Q. Do you know if either or both of those  
4 weapons had been used in the assault on Mr. Sosoya  
5 that Mario Rodriguez described?

6 A. I don't believe that they were. Because I  
7 remember asking him if there was DNA on them besides  
8 his, something to that effect. And he said  
9 something that he had them but they weren't used on  
10 people, something along those lines.

11 Q. You don't remember exactly?

12 A. I don't remember the exact words, but I  
13 remember thinking: Do I need to send these to the  
14 lab? Is there a victim attributed to these?

15 And these were unused, but carried by him  
16 at one time, was my impression.

17 Q. So based upon that impression, you took  
18 his word for it and you didn't send them to the lab?

19 A. No, they're still -- I'm not sure if we  
20 have them or if STIU has them. They may have been  
21 transferred to us.

22 Q. So you don't know whether there is any  
23 forensic evidence connecting those weapons to any of  
24 Mario Rodriguez' past assaults or killings?

25 A. I don't believe there is, no.

1 Q. You don't know because you didn't send  
2 them to the lab, right?

3 A. Well, the lab wouldn't tell me that. The  
4 lab wouldn't just give me that type of an answer.

5 Q. Let me ask a different question, then.

6 A. Sure.

7 Q. You don't know if Mario Rodriguez' DNA or  
8 the DNA of the victim is on those shanks, because  
9 they haven't been processed, right?

10 A. Well, the second part of your question,  
11 it's true they haven't been processed. I don't  
12 believe they were used in any assaults on people.

13 Q. But you don't know? You believe they  
14 weren't?

15 A. I believe they weren't. I don't have any  
16 victims left that I would attribute it to.

17 Q. Let's talk about Mr. Esparza. Do you  
18 remember Mario Rodriguez testified that he stabbed  
19 Mr. Esparza, and that he bit his ear off? Do you  
20 remember that testimony?

21 A. Yes.

22 Q. Do you know what weapon was used to  
23 stab -- I mean, I understand that Mario Rodriguez  
24 used his teeth to bite Mr. Esparza's ear off, but do  
25 you know what weapon was used to stab Mr. Esparza?

1 A. Yes.

2 Q. What weapon was that?

3 A. A shank.

4 Q. Do you know where that shank is?

5 A. I believe it broke in the victim.

6 Q. Okay. So you think that shank was  
7 recovered and is not here today?

8 A. Yes.

9 Q. And do you know what weapon, sitting here  
10 today, was used to assault Mr. Sosoya, what weapon  
11 Mr. Rodriguez used to assault Mr. Sosoya?

12 A. Yes.

13 Q. Which weapon was that?

14 A. It was a crudely made one. He didn't have  
15 enough time to finish it. And it also broke.

16 Q. So that is not one of the two weapons that  
17 you've recovered from Santa Fe?

18 A. Correct.

19 Q. And you were aware, and I think  
20 participated in the recovery of a shank that Mario  
21 Rodriguez told you he had in his shoe, right?

22 A. Yes. I watched. Yes.

23 Q. Okay.

24 A. I watched the shoe opened here in court.

25 Q. Like we all did?

1 A. Yes.

2 Q. So do you know when -- if and when Mario  
3 Rodriguez used that shank on any victims?

4 A. I don't believe he did.

5 Q. Do you know? This is based on what Mario  
6 Rodriguez told you.

7 A. That, and the lack of any other assaults.  
8 We would need a victim to assume that he used it on  
9 the person.

10 Q. Okay. So you don't have a victim with an  
11 unknown assailant, so you're just presuming that  
12 Mario Rodriguez didn't use that weapon?

13 A. To assault a person, yes.

14 Q. Okay. Let's take a look at Defendants'  
15 Exhibit EV. Do you recognize this image, Agent  
16 Acee?

17 A. Yes.

18 Q. What is that?

19 A. That's two shanks wrapped in what I  
20 believe is cellophane, that Mario Rodriguez removed  
21 from his rectum during an interview here at the  
22 courthouse on October 24th of 2017.

23 Q. Okay. And did you actually -- I'm not  
24 trying be gross, but how do you know he removed them  
25 from his rectum? Did you see those shanks emerge?

1 A. No.

2 Q. He did it himself? The FBI was not  
3 involved?

4 A. The Marshal Service was involved.

5 Q. Okay.

6 A. He told us they were there, and then the  
7 marshals removed him and took him to an area that  
8 they wanted the weapons produced.

9 Q. Okay. And let's take a look at Exhibit  
10 EW. Are these the same weapons, but just unwrapped?

11 A. Yes.

12 Q. And let's also look at EX. Same weapons,  
13 right?

14 A. Yes.

15 Q. And so on that day that Mr. Rodriguez  
16 presented you with these weapons, you took them into  
17 evidence?

18 A. Eventually. That day, the Marshal Service  
19 took them into their evidence, and I later caused  
20 that to be transferred to the FBI's evidence.

21 Q. Okay. And so sitting here today, do you  
22 know where these weapons are? They're not in the  
23 courtroom, right?

24 A. I didn't bring them, no. I believe  
25 they're still in our evidence --

1 Q. Okay.

2 A. -- in Albuquerque.

3 Q. They have not been processed for any  
4 forensic evidence, have they --

5 A. No.

6 Q. -- to your knowledge?

7 And you don't know whether or not these  
8 weapons were used on any victim, do you?

9 A. Again, I don't believe they were.

10 Q. You don't know?

11 A. Do you want me to put a percentage on it?

12 Q. No.

13 A. I mean, I don't believe they were used on  
14 any people.

15 Q. Because that's what Mario Rodriguez told  
16 you?

17 A. And we don't have a victim.

18 Q. Okay. And on the same day that Mario  
19 Rodriguez retrieved these weapons that he had been  
20 keistering and provided them to the FBI, he also  
21 told you about his desire to kill other defendants  
22 in this case in the courtroom, right?

23 A. Yes.

24 Q. And, in fact, he told you that he had a  
25 specific plan for how he was going to carry out

1 those executions; isn't that right?

2 A. Yes.

3 Q. And --

4 A. Just one.

5 Q. Just one? He only told you about one?

6 A. Just one execution he had planned.

7 Q. And so you met with Mario Rodriguez on  
8 November 1, 2017; isn't that right?

9 A. I'm not sure. One of the debriefs of him  
10 I was not present at. I did the follow-on. I think  
11 Agent Stemo did the first. So I was there the 24th.  
12 There was a second debrief that I wasn't at. And  
13 the third one, I did.

14 Q. Okay. So I'm just talking -- we don't  
15 have to get the specific date. And we'll talk about  
16 the one Agent Stemo did. But the one that you did,  
17 you took a lot of notes, right?

18 A. Yes, ma'am.

19 Q. You were the primary investigator? I'm  
20 sorry. What was the word? Primary agent?

21 A. Or interviewer, yes.

22 Q. Interviewer on that one. And so you took  
23 a lot of notes. And you actually produced a draft  
24 302 that you then presented to Mario Rodriguez for  
25 his commentary; isn't that right?

1           A.     I wanted to make sure -- not so much  
2     commentary. I wanted to make sure I got details  
3     correct.

4           Q.     Okay.

5           A.     I had noticed in some prior 302s, where we  
6     didn't get the details exactly correct.

7           Q.     Okay. And so sometimes it has been your  
8     practice to draft a report, and then provide it to  
9     the government witness so the government witness can  
10    annotate or make changes or additions to that  
11    report; is that right?

12          A.     No. That was actually -- I think that was  
13    the first time I've done that. I'll go over it with  
14    them and their attorney. But it was the first  
15    time -- I think it had to do with some time  
16    constraints, where I gave an actual physical copy.  
17    I can't think of another circumstance where I've  
18    done that.

19          Q.     But in this case with Mario Rodriguez, you  
20    thought it was important enough to get the details  
21    right, and you had the time, right?

22          A.     Yes, I definitely want to get the details  
23    right.

24          Q.     And you didn't have any time constraints  
25    that you were just talking about, so you provided



1 Mario Rodriguez with a draft?

2 A. I'm saying that we did have the time  
3 constraints, and that's why I did provide it, so it  
4 left with him.

5 Q. Okay.

6 A. Then I picked it up at a later date.

7 Q. So Mario Rodriguez took your typewritten  
8 draft report and made some additions to it, right?

9 A. Correct.

10 Q. And with respect to his plan to execute  
11 one of the co-defendants during the course of the  
12 trial, he provided you more detail, right?

13 A. I assume so, if you're looking at it.

14 Q. Would you like to see it, and would it  
15 refresh your memory to look at his notes?

16 A. Yes.

17 MS. FOX-YOUNG: Your Honor, may I  
18 approach?

19 THE COURT: You may.

20 Q. Agent Acee, you see right here?

21 A. Yes.

22 Q. And so Mario Rodriguez gave you a little  
23 bit more detail. Do you remember now what he told  
24 you about how he was going to kill one of his  
25 co-defendants in trial?

1 A. Yes.

2 Q. What did he say?

3 A. During a lunch break, he was going to  
4 retrieve -- I think what he said was, he was going  
5 to stash the knife back there, behind that door,  
6 during a bathroom break. And then take a break, and  
7 either during a lunch break or one of the court  
8 recesses, he was going to stab Mauricio Varela, one  
9 of his -- one of the co-defendants in the larger SNM  
10 case.

11 Q. Okay. And the knife that he was going to  
12 stash, is that the one that he was carrying in his  
13 rectum?

14 A. It would have been one of those two  
15 knives.

16 Q. Okay. So he made this change for you, but  
17 you didn't actually adopt his language and include  
18 it in your final report, did you?

19 A. I'm not sure.

20 Q. So let's back up a little bit with Mario  
21 Rodriguez. You explained that you did not  
22 participate in the first debrief of him, that Agent  
23 Stemo was there, but you were not there; isn't that  
24 right?

25 A. I think that was the second one. I just

1 know that she wrote the report. I don't think I was  
2 at that one. Or I may have had to leave for some  
3 reason.

4 Q. Have you had occasion to review that  
5 report?

6 A. I have seen it, yes.

7 Q. Okay. So you remember that it was at that  
8 debrief that Mario Rodriguez told the FBI that when  
9 he went into Rudy Perez' cell to take pieces off of  
10 Rudy Perez' walker, Rudy Perez looked scared? Do  
11 you remember that?

12 A. I do recall reading that, yes.

13 Q. Okay. And that was Agent Stemo's -- that  
14 was included in Agent Stemo's report, and then  
15 provided to you as the case agent, right?

16 A. Yes, ma'am.

17 Q. And you looked at that report before you  
18 debriefed Mario Rodriguez on the occasion that we  
19 just talked about?

20 A. I did.

21 Q. And on that occasion, when Mario Rodriguez  
22 removed the shanks and told you about the other  
23 shanks, you gave him an opportunity to review Agent  
24 Stemo's earlier report, didn't you?

25 A. Yes.

1 Q. And you gave him an opportunity to clarify  
2 anything that he wanted to clarify in that report,  
3 right?

4 A. Yes.

5 Q. And he testified about that. Do you  
6 remember that?

7 A. Yes.

8 Q. And he never changed his observation or  
9 the fact that when he entered Rudy Perez' cell on  
10 March 7, 2014, to take shanks off of Rudy's walker,  
11 Rudy looked scared? He never changed that in the  
12 report, right?

13 A. Agent Stemo didn't change that in the  
14 report, and he didn't request that that be changed.

15 Q. Okay. And so subsequent to his review of  
16 that earlier report, I think you testified you  
17 completed a report, and then you sent him back to  
18 his cell with that report to annotate, right?

19 A. My draft, yes.

20 Q. And you took notes on it, and you looked  
21 at some of those notes.

22 MS. FOX-YOUNG: What is defense next in  
23 order? Your Honor, I am marking Defendants' Exhibit  
24 FV. And I would just like to approach the witness.

25 THE COURT: You may.

1 Q. Agent Acee, do you know what this document  
2 is?

3 A. I believe so. Did you just receive this?

4 Q. Do you recognize it?

5 A. Yes.

6 Q. And I'm also going to show you the report  
7 we looked at a few minutes ago with Mario Rodriguez'  
8 handwritten annotations. Do you see how they're in  
9 caps?

10 A. Yes.

11 Q. And you see how this document has caps on  
12 it?

13 A. Yes.

14 Q. Can you tell me if that handwriting looks  
15 similar to you?

16 A. It looks similar.

17 Q. Okay. Agent Acee, you said it looks  
18 similar?

19 A. Yes.

20 Q. Okay. I think it just might have been we  
21 moved the mic, and it was a little hard to hear.

22 A. It looks similar.

23 Q. And having looked at this document, can  
24 you tell me what it is?

25 A. Yes. It's a letter written by Mario

1 Rodriguez. I asked if that was a new document,  
2 because I think it was just produced to the  
3 Government and the defense yesterday.

4 Q. Last night, right?

5 A. Yes.

6 Q. And you think this is a document that  
7 Mario Rodriguez authored in 2014?

8 A. I do.

9 Q. All right.

10 MS. FOX-YOUNG: Your Honor, I move the  
11 admission of Defendants' Exhibit FV.

12 THE COURT: Any objection, Mr. Castellano?

13 MR. CASTELLANO: No objection, Your Honor.

14 THE COURT: Any objection from any other  
15 defendant? Not seeing or hearing any, Defendants'  
16 Exhibit FV will be admitted into evidence.

17 (Defendants' Exhibit FV admitted.)

18 BY MS. FOX-YOUNG:

19 Q. All right. And so you will recall that  
20 when Mario Rodriguez testified a number of days ago,  
21 Ms. Armijo asked him how Rudy Perez seemed when he  
22 came in and he took the piece from the walker. And  
23 at first he said that Rudy Perez had no expression,  
24 something along those lines. Do you remember that?

25 A. Vaguely.

1 Q. Ms. Armijo asked him that. And then Mr.  
2 Villa got up, and he asked him about this prior  
3 statement to Agent Stemo, that actually when he had  
4 gone into Rudy Perez' cell, Rudy looked scared. Do  
5 you recall that?

6 A. In the statement, yes.

7 Q. Yes. And you'll also recall that he was  
8 asked about having the chance to correct Agent  
9 Stemo's report, right?

10 A. Yes.

11 Q. And he testified, just as you just have,  
12 that he had the opportunity to correct that report,  
13 right?

14 A. Correct.

15 Q. And that he never changed that statement,  
16 right?

17 A. Right.

18 Q. Okay. So it wasn't until he testified  
19 before this jury that he tried to change that  
20 statement a little bit. Do you remember that?

21 A. I know that his testimony and the  
22 statement are different.

23 Q. Okay. And Mario Rodriguez made a number  
24 of annotations on this draft 302. I'm sure -- it's  
25 been a few months; it's been since November of last

1 year. But you have reviewed at some point all of  
2 those changes, right?

3 A. Yes.

4 Q. And you took them to heart?

5 A. I wouldn't say that. I mean, I reviewed  
6 them.

7 Q. Do you remember when you debriefed him  
8 that you asked him, as you ask all of these  
9 government witnesses, why he wanted to cooperate  
10 with you, right?

11 A. Yes.

12 Q. And do you remember what you included in  
13 your report as the answer to that question?

14 A. No. I have an answer off the top of my  
15 head, but I don't recall exactly what I said in my  
16 report.

17 Q. What's the answer off the top of your  
18 head?

19 A. He was fatigued. He was tired.

20 Q. Do you remember that you wrote that he  
21 cooperated because he wanted to change his life?

22 A. Yes.

23 Q. And that he was tired and out of energy?

24 A. Yes.

25 Q. And you think that's accurate?



1 A. I do.

2 Q. And you recall that when you gave Mario  
3 Rodriguez the chance to change or correct or add to  
4 that answer, he changed it? Do you remember that?

5 A. No.

6 MS. FOX-YOUNG: Your Honor, may I  
7 approach?

8 THE COURT: You may.

9 A. Yes.

10 Q. Do you see that, Agent Acee?

11 A. Are you going to ask me to read it? I  
12 need to look at it longer, if I could.

13 Q. You could read it.

14 A. Just what he added?

15 Q. Yeah. What did he add?

16 A. I think the first word is "and." Yes.  
17 "And the SNM was so fucked up, no loyalty!"  
18 exclamation point.

19 Q. So when you gave Mario Rodriguez the  
20 chance to put in his report his reason for becoming  
21 a government witness, he said because "the SNM was  
22 fucked up, no loyalty," right?

23 A. He added that.

24 Q. Okay. But that didn't go into your final  
25 report?

1 A. Did it not?

2 Q. No.

3 A. Okay.

4 Q. You also had what appears to be a lengthy  
5 conversation, dialogue, with Mario Rodriguez about  
6 what it was like to be in solitary confinement at  
7 PNM, didn't you?

8 A. I don't know how lengthy it was, but he's  
9 talked about his experiences there.

10 Q. You remember talking to him about that?

11 A. I remember him making some comments about  
12 that, yeah. I don't know how interested I was in  
13 it, but he did talk about it.

14 Q. And he talked about all the increased  
15 violence and the paranoia that comes from being in  
16 solitary?

17 A. Yes.

18 MR. CASTELLANO: Calls for hearsay.

19 THE COURT: Well, are you trying to elicit  
20 out-of-court statements?

21 MS. FOX-YOUNG: It's impeachment.

22 THE COURT: Well, let me do this: Let me  
23 once again instruct the jury that you cannot  
24 consider these for the truth of the matter. These  
25 are only to determine the credibility of the

1 witnesses that you've heard, not for the purposes of  
2 considering these statements for the truth of the  
3 matter.

4 MR. CASTELLANO: And I object because this  
5 isn't impeaching any statement by Mario Rodriguez,  
6 Your Honor.

7 THE COURT: Well, why don't y'all  
8 approach.

9 (The following proceedings were held at the  
10 bench.)

11 THE COURT: So what statement by Mr.  
12 Rodriguez are you impeaching?

13 MS. FOX-YOUNG: Your Honor, I don't have a  
14 direct quote, but his testimony about solitary was  
15 along the lines of: It's not bad.

16 Mr. Villa asked him about it. And I'm not  
17 going any further on this. I want to get into his  
18 change, and what he added to it. But he did not  
19 talk about the extreme paranoia when Mr. Villa tried  
20 to elicit that from him, and the violence that comes  
21 from locking these guys in solitary. So it's  
22 impeachment of that testimony.

23 THE COURT: I don't have a transcript  
24 where I can dispute what Ms. Fox-Young says. Is  
25 your memory so different that I should not go ahead

1 and allow this?

2 MR. CASTELLANO: Yes, Your Honor. Even  
3 from his statements, he said that's not that bad.  
4 That isn't necessarily impeachment. That statement,  
5 even if the recollection is true, his opinions, it's  
6 not bad, regardless of the result. So it's clearly  
7 trying to get in a hearsay statement to help Rudy  
8 Perez, obviously, but it doesn't impeach the  
9 statement. It's not contradictory to his prior  
10 statement.

11 MS. FOX-YOUNG: I think it is  
12 contradictory, and it's for the jury to decide.

13 THE COURT: I think there is enough  
14 tension there. I'll go ahead and allow the  
15 statement. But I'll remind again, the jury, that  
16 they're not to consider this for the truth. They  
17 can only use it to determine Mr. Rodriguez'  
18 credibility.

19 (The following proceedings were held in  
20 open court.)

21 THE COURT: All right. Again, I'll remind  
22 you that you can't consider this testimony for the  
23 truth of the matter, what Mr. Rodriguez said. You  
24 can only use it to determine how credible Mr.  
25 Rodriguez is when he testified. So you can use it

1 only for that purpose, but not for the truth of the  
2 matter.

3 Ms. Fox-Young.

4 MS. FOX-YOUNG: Thank you, Your Honor.

5 BY MS. FOX-YOUNG:

6 Q. Agent Acee, I think you were saying you  
7 did recall Mario Rodriguez talking to you about how  
8 paranoid people get in solitary confinement, right?

9 A. Yes.

10 Q. And the violence that ensues as a result?

11 A. Yes.

12 Q. The plotting and the scheming?

13 A. Yes.

14 Q. And do you remember that that is another  
15 area of your draft report that Mario Rodriguez  
16 actually added to when you gave him the opportunity?

17 A. That sounds familiar, yes.

18 Q. Okay. Do you remember what he said?

19 A. No.

20 MS. FOX-YOUNG: Your Honor, may I  
21 approach?

22 THE COURT: You may.

23 A. Do you want me to read it?

24 Q. Sure.

25 A. Just what's highlighted? Or everything?

1 Q. What's highlighted.

2 A. It's a little difficult to read.

3 Q. How about I'll read it, and you tell me if  
4 you think this is inaccurate. He says it's --

5 THE COURT: Well, I think put it in front  
6 of him to refresh his memory. I think that's where  
7 we are.

8 Q. You can take your time. It's a little bit  
9 hard to read the writing.

10 A. I think I can get everything but one word.  
11 He says, "It's so fucked up that it will never  
12 amount to what it was" -- and then I'm not sure what  
13 the next word is; oh, it's parentheses -- "SNM being  
14 what it used to be."

15 Q. Thank you.

16 So Mario Rodriguez told you -- he added  
17 this to the report. He said, "It's so fucked up  
18 that it will never amount to what it was, SNM being  
19 what it used to be."

20 Do you think he meant that SNM would never  
21 be what it used to be again?

22 A. Yes.

23 Q. But you didn't include that in your final  
24 report, did you?

25 A. I may not have.

1 Q. You didn't include any F-words in your  
2 final report, did you?

3 A. Did I not? I'll sometimes put them in  
4 quotations. But I don't word my reports that way,  
5 no.

6 Q. And did Mario Rodriguez tell you anything  
7 about -- anything more about how different things  
8 had become with the SNM as compared with the old  
9 days?

10 A. I'm not sure. He may have.

11 Q. You don't remember him telling you that  
12 the tabla used to be really powerful and meaningful,  
13 but it wasn't anymore?

14 A. Not off the top of my head, no. Forgive  
15 me. I've just talked to so many of these guys.

16 Q. I understand, Agent Acee. Would you like  
17 to just take a look to refresh?

18 A. Sure.

19 Q. Agent Acee, it starts right here on this  
20 page and just goes to the very beginning of the next  
21 page.

22 A. And the question is: Did he add anything?

23 Q. The question is: Do you recall Mario  
24 Rodriguez, when you debriefed him, telling you about  
25 the tabla, how it used to be powerful and

1 meaningful, and this wasn't true anymore?

2 A. Yes. Yes.

3 Q. And that's actually what you documented in  
4 the report, isn't it?

5 A. Yes, ma'am.

6 Q. Okay. Thank you. And so the truth is  
7 that Mario Rodriguez gave you at least three big  
8 reasons in his annotations to this report for why he  
9 cooperated? He added those in, didn't he?

10 A. I don't know that he gave me big reasons.  
11 The second part of your question is, yes, he  
12 obviously added some information to my draft.

13 Q. You don't dispute that he added the  
14 information that there was no loyalty anymore in the  
15 SNM, right?

16 A. Correct.

17 Q. And that it's "so fucked up"?

18 A. Yes.

19 Q. And that the tabla used to be meaningful,  
20 but it isn't anymore?

21 A. Yes. That wasn't an addition. That was  
22 something he told me, and is in there.

23 Q. That's right. And that "SNM wasn't what  
24 it used to be"?

25 A. Yes.



1 Q. Okay. And so the truth is that Mario  
2 Rodriguez told you in his own words that there was  
3 no loyalty anymore in this gang, and that's why  
4 he -- at least one of the reasons he wanted to  
5 cooperate; isn't that right?

6 A. Yes. He was -- he felt that way, yes.

7 Q. Yeah. And he also told you on more than  
8 one occasion that he wanted to work for the  
9 Government because he felt that was his best option,  
10 right?

11 A. No. I think he came to that conclusion.  
12 I don't know that he put it in those words.

13 Q. He never told you it was his best option?

14 A. I assume you're going to refresh my memory  
15 with something. I don't recall that, though, no.

16 Q. You remember meeting -- well, I think  
17 you've testified about a meeting with Mario  
18 Rodriguez and Ron Sanchez --

19 A. Yes.

20 Q. -- and Mark Myers, who was with the New  
21 Mexico Corrections Department?

22 A. Yes.

23 Q. And you had -- actually, this is one of  
24 the occasions on which you recorded the interview,  
25 isn't it?

1 A. It is.

2 Q. Okay. So you had a long recorded -- well,  
3 I think it was long. Maybe you don't think it was  
4 long. You had a recorded interview with these  
5 gentlemen, in which you discussed a variety of  
6 topics, right?

7 A. Two. A couple topics.

8 Q. And do you remember when that happened?

9 A. November of 2017. I don't remember the  
10 exact date. Maybe the 16th, November 16th. Going  
11 off memory here, though.

12 Q. Okay. And you don't remember Mario  
13 Rodriguez telling you then that he thought best  
14 option was to go into the feds and become a witness?

15 A. I imagine he must have said that to Ronald  
16 Sanchez. Did he say it to me? I don't remember it  
17 that way.

18 Q. Well, you testified that you were there,  
19 right?

20 A. I was there, yes.

21 Q. I mean, you all were sitting in a small  
22 room, right?

23 A. Yes.

24 Q. Were you sitting around a table?

25 A. Yes.

1 Q. Were you sitting next to Mario Rodriguez?

2 A. He was nearby at the other end of -- yeah.

3 Q. And was Agent Stemo also there?

4 A. She was. So at the table it was Ronald  
5 Sanchez, Mario Rodriguez, and myself. Mark Myers  
6 and Nancy Stemo were just kind of standing along the  
7 wall. And then Captain Sergio Sapien from the STIU  
8 was seated elsewhere in the office, in a chair.

9 Q. Okay. So you and Agent Stemo were there  
10 representing the Federal Bureau of Investigation?

11 A. Yes.

12 Q. And then the other personnel that you've  
13 talked about, you said Sapien and Myers, they were  
14 there from the New Mexico Corrections Department,  
15 right?

16 A. That's who they were employed by.

17 Q. And Ron Sanchez was there?

18 A. Yes.

19 Q. And who else was there?

20 A. Mario Rodriguez.

21 Q. And Mario Rodriguez was there. And so you  
22 were sitting at a table with Mario Rodriguez and Ron  
23 Sanchez?

24 A. Yes.

25 Q. Okay. And that was when Mario Rodriguez

1 said to the two of you, "I think the best option is  
2 to go into the feds and become a witness." Right?

3 A. Yes. I think what I'm struggling with is,  
4 I don't know if he's saying that to Ron, though,  
5 like, "Hey, Ron, the best option is to do this," or  
6 if he's representing that's his best option.

7 Q. Okay. But you don't dispute that he said  
8 it was the best option?

9 A. Yes.

10 Q. You do dispute it?

11 A. I don't dispute it.

12 Q. Okay.

13 A. I agree with you.

14 Q. Okay. And you also discussed with Mario  
15 Rodriguez that as a result of his work for the  
16 Government, telling stories on behalf of the  
17 Government, that he was going to be able to do easy  
18 time, didn't you?

19 A. Well, no.

20 Q. You don't think you talked about that at  
21 this meeting?

22 A. No. Because I wouldn't say to somebody,  
23 telling stories. I'm not interested in their  
24 stories. I don't want to be told stories.

25 Q. All right. Let me put it this way, Agent

1 Acee: At that meeting, where the three of you are  
2 at the table, do you remember discussing the subject  
3 of doing easy time?

4 A. Easier time. I probably might have said  
5 something like that, yes.

6 Q. Okay. And do you remember Mario Rodriguez  
7 saying, "It's going to be easy time"?

8 A. Compared to going to a gang yard, I  
9 believe that's correct, yes.

10 Q. Do you remember that?

11 A. I don't remember it verbatim, but I  
12 remember talking about doing easy time versus going  
13 and representing the SNM and the feds. Yes, I  
14 remember talking about that.

15 Q. You remember that? Do you recall that  
16 Mario Rodriguez didn't like being in solitary  
17 confinement? He told you about the paranoia and the  
18 violence and the plotting and the scheming, right?

19 A. Yes. He gave me examples of what it was  
20 like, and he used me in one of his examples.

21 Q. Okay. And you remember that at this  
22 meeting, where the three of you were at the table,  
23 when he said, "It's going to be easy time in the  
24 fed," he also talked about finally getting out, not  
25 having to be in solitary anymore, right?

1 A. Yes.

2 Q. Wouldn't have to be in the hole no more?

3 A. Yes.

4 Q. You remember that?

5 A. I do.

6 Q. And he was -- you were -- the three of you  
7 were having this group conversation, I think you  
8 testified, at the request of Ron Sanchez, right?

9 A. Yes.

10 Q. And so this conversation came to be --  
11 these statements from Mario Rodriguez were  
12 descriptions of how good it could be if you become a  
13 government witness, right? That's what he's trying  
14 to tell Ron Sanchez?

15 A. He injected a lot of his opinion, yes.

16 Q. Right.

17 A. And I didn't stop him.

18 Q. You didn't stop him because it's true,  
19 right?

20 A. I don't know. I mean, I've never been in  
21 a prison gang or in solitary confinement. So I have  
22 heard other prison gang members represent, you know,  
23 PC yards and WITSEC as being easier time than being  
24 on a gladiator yard or a gang yard, yes.

25 Q. Well, you would agree with me that Mario

1 Rodriguez is pretty excited about the fact that  
2 whatever time he's got to do -- and we'll talk about  
3 that -- is going to be easy time in Tucson or in  
4 Florida, right? You remember him saying that?

5 A. Something like that. He's excited he  
6 doesn't have to pick up a shank anymore and be a  
7 gang member.

8 Q. Well, that's not what I asked you. I  
9 asked you if he was excited about going to Tucson or  
10 to Florida?

11 A. For those reasons.

12 Q. Yeah. Because he's going to get contact  
13 visits, right? He said that?

14 A. I don't know.

15 Q. You don't remember that?

16 A. He may have said something like that.

17 Q. I know it's been a little while, but you  
18 don't remember how excited he was, and how he was  
19 trying to pump Ron Sanchez up, telling him, "You go  
20 to Tucson or Florida, you get contact visits. You  
21 don't have to be in the hole. It's a whole other  
22 deal"?

23 A. Well, Mr. Rodriguez is pretty stoic. I  
24 don't know that I'd say he's excited. I agree with  
25 you that he talked about that kind of stuff. Maybe

1 he was excited. I don't know him real well.

2 Q. You'd agree with me that as part of his  
3 pitch, he said, "I'm going to get contact visits  
4 when I go to Tucson or Florida"?

5 A. I believe he did say that.

6 Q. Would you like to see the transcript?  
7 Would that help you remember?

8 A. I'll take your representation.

9 Q. All right. So Mario Rodriguez is not even  
10 close to the only government witness on Baby Rob's  
11 list that you looked at earlier, right? There were  
12 a bunch?

13 A. There were a bunch.

14 Q. And we talked about Billy Cordova, that  
15 he's on that list?

16 A. Yes.

17 Q. Can you tell me when you first learned  
18 about Billy Cordova's involvement in the criminal  
19 activity?

20 A. Early on in the investigation I put, or  
21 caused the Bureau to put together an organizational  
22 chart, or not even an organizational, just who do we  
23 know that's SNM. And I had faces, names, and dates  
24 of birth. I think he was in on some of the original  
25 stuff. Because we were targeting everybody SNM.



1 Q. Okay. And when you talk about some of the  
2 original stuff, and making that chart, did you use  
3 this list of 167 people from Baby Rob in your chart?

4 A. No.

5 Q. Okay. So are you going back farther in  
6 time?

7 A. Yes.

8 Q. So when did you make that chart?

9 A. I initiated the investigation in March  
10 2015. Within weeks or a month, we would have had a  
11 group of analysts already populating charts and  
12 target lists and target packets.

13 Q. Okay.

14 A. Right away.

15 Q. Okay. Was Billy Cordova on your radar in  
16 March 2015?

17 A. I think we knew him as SNM, but he wasn't  
18 on my radar in the first phase. I had him in a  
19 later phase.

20 Q. Okay. And the first indictment comes in  
21 at the end of 2015, right?

22 A. Correct.

23 Q. And that's when you testified that you and  
24 Agent Sainato and others sat down with Baby Rob's  
25 brother, Roy Martinez, right, December 17, 2015?

1           A.     You use that term loosely, right? Because  
2 they're not brothers. Carnals? Is that what we're  
3 saying?

4           Q.     Do you want to call them carnals?

5           A.     I don't, but that's the only way they're  
6 going to be brothers.

7           Q.     You sat down with Roy Martinez in December  
8 of 2015. Do you remember?

9           A.     I don't. I remember meeting him, but  
10 after the takedown. I interviewed him sometime  
11 after the takedown.

12          Q.     Okay. But it is your testimony that you  
13 were present when Agent Sainato took copious notes  
14 at that interview with Roy Martinez, right?

15          A.     I was present.

16          Q.     And Roy Martinez is known as Shadow?

17          A.     Yes.

18          Q.     And you heard the prosecutor earlier this  
19 morning call him a "big leader"?

20          A.     I might have missed that part where she  
21 said about Baby Rob and him, but he's a leader.

22          Q.     Okay. It's your testimony that he's a  
23 leader. And is he a leader on a par with Baby Rob,  
24 real high up in the organization?

25          A.     Yes. I don't think he was as well liked,

1 but he was a leader at one time.

2 Q. And he disgorged a lot of information with  
3 you and Agent Sainato, didn't he?

4 A. Yes.

5 Q. And if you hadn't already had Billy  
6 Cordova on your radar in 2015, you certainly did  
7 after you met with Shadow, Roy Martinez, right?

8 A. To be clear, there is a lot of people on  
9 the radar. I mean, all SNM was on the radar. So  
10 Billy was on the radar in the earliest stages, as  
11 were probably 100 or 150 guys.

12 Q. 167 guys on Baby Rob's list, right?

13 A. I didn't count them, but that's what you  
14 said.

15 Q. And so when the FBI sat down, was this the  
16 first time that you talked to Shadow, Roy Martinez,  
17 December 17, 2015? And I'll represent to you -- let  
18 me just represent to you, Agent Sainato's notes that  
19 you looked at reflect a date of December 17, 2015.  
20 Do you have any reason to dispute the accuracy of  
21 that date for that interview?

22 A. No.

23 Q. Do you know if that's the first time that  
24 you sat down with Shadow?

25 A. It's the first time I did.

1 Q. Do you know if the FBI talked to him  
2 before that?

3 A. Everybody was interviewed or attempted to  
4 be interviewed on December 3rd, when we did the  
5 takedown.

6 Q. Okay. So two weeks later, you and Agent  
7 Sainato debriefed Roy Martinez?

8 A. Yes.

9 Q. And part of your -- part of that debrief  
10 covered Billy Cordova rather extensively, didn't it?

11 A. I don't recall.

12 Q. Do you remember learning anything about  
13 Billy Cordova during the course of that debrief?

14 A. I've learned a lot about Billy Cordova in  
15 a lot of debriefs. I don't know exactly what was  
16 talked about in that one.

17 Q. If you took a look at Agent Sainato's  
18 notes, would that help you recall the specifics of  
19 what you discussed about Billy Cordova with Roy  
20 Martinez?

21 A. I prefer the 302, if I have a choice.

22 Q. I'm asking about the notes.

23 A. If that's all you're going to let me look  
24 at, I'll look at them.

25 Q. And I can definitely provide the 302 for

1 you, as well.

2 A. I just prefer the 302, because it's going  
3 to be more in-depth in detail.

4 MS. FOX-YOUNG: Your Honor, may I  
5 approach?

6 THE COURT: You may.

7 Q. Agent Acee, first, I'm just going to have  
8 you take a look at these notes. Does this refresh  
9 your memory as to your discussion about something  
10 involving Billy Cordova?

11 A. Yes.

12 MR. CASTELLANO: Could we get a Bates  
13 stamp for this document, please?

14 MS. FOX-YOUNG: 42980, and 42974 to 42975.

15 Q. All right. Agent Acee, I'm also showing  
16 you the report generated by Agent Sainato,  
17 presumably with the assistance of these notes that  
18 you've looked at.

19 A. Okay.

20 Q. Agent Acee, having looked at these  
21 documents, do you have some recollection now of what  
22 the FBI learned about Billy Cordova on December 17,  
23 2015?

24 A. Yes.

25 Q. What was that?

1           A.     That Billy Cordova and Roy Martinez did  
2     some time together when they were incarcerated  
3     together. Billy Cordova, according to Roy Martinez,  
4     told Roy that he shot Sammy Chavez over \$100 drug  
5     debt owed to Gerald Archuleta. In the notes,  
6     there's an indication that was highlighted that  
7     said -- what I interpret from the notes is that it  
8     said who's on the streets that might be able to  
9     conduct the hit. And Billy Cordova was one of the  
10    names.

11          Q.     Okay. And so Roy Martinez told you and  
12    Agent Sainato that Billy Cordova shot Sammy Chavez,  
13    right?

14          A.     He told us that Billy told him that.

15          Q.     Right. And so Agent Sainato's notes  
16    reflect, "Billy shot him, told Shadow," right?

17          A.     Yes.

18          Q.     Okay. And you remember -- I think it was  
19    Friday of last week -- that Billy Cordova testified  
20    that he didn't shoot Sammy Chavez, right?

21          A.     Correct.

22          Q.     And Billy Cordova also told you that he  
23    didn't shoot Sammy Chavez?

24          A.     Correct.

25          Q.     Okay. But you learned in December 2015

1 that he apparently told somebody else that he shot  
2 Sammy Chavez?

3 A. According to that person, yes.

4 Q. Okay.

5 THE COURT: Ms. Fox-Young, would this be a  
6 good time for us to take our lunch break?

7 MS. FOX-YOUNG: Yes, Your Honor.

8 THE COURT: Be patient with me, ladies and  
9 gentlemen of the jury. We're taking our first lunch  
10 break during the defendants putting on evidence in  
11 this case, so I'm going to remind you of a few  
12 things that are especially important.

13 Until the trial is completed, you're not  
14 to discuss this case with anyone, whether it's  
15 members of your family, people involved in the  
16 trial, or anyone else, and that includes your fellow  
17 jurors. If anyone approaches you and tries to  
18 discuss the trial with you, please let me know about  
19 it immediately.

20 Also, you must not read or listen to any  
21 news reports of the trial. Again, don't get on the  
22 internet and do any research for purposes of this  
23 case. And finally, remember that you must not talk  
24 about anything with any person who is involved in  
25 the trial, even if it doesn't have anything to do

1 with the trial.

2 If you need to speak with me, simply give  
3 a note to one of the Court Security Officers or  
4 Ms. Standridge.

5 I am going to repeat these a little bit  
6 more as we transition in this case this week, but if  
7 I don't, do keep them in mind each time we do take a  
8 break.

9 All right. We'll be in recess for about  
10 an hour.

11 All rise.

12 (The jury left the courtroom.)

13 THE COURT: All right. We'll see y'all in  
14 about an hour.

15 (Lunch recess.)

16 THE COURT: All right. Let's go on the  
17 record. I think Ms. Standridge said that you,  
18 Ms. Jacks, wanted to call some witnesses out of  
19 order and you need to talk to the Government here?

20 MS. JACKS: I haven't had a chance to ask  
21 them. Yes.

22 THE COURT: All right. Why don't you do  
23 that now. That would probably be the best use of  
24 time. So is everyone agreeable? Is the Government  
25 agreeable?



1 MS. JACKS: I think they're thinking about  
2 it, Your Honor.

3 THE COURT: They're thinking about it?  
4 All right. While they're huddling, I did get to  
5 finish the Government's brief on Mr. Perez' medical,  
6 and I'll continue to think about it, but I'm  
7 inclined to deny the motion. So I think there are  
8 more useful purposes for this information than just  
9 sympathy or jury nullification.

10 I haven't had a chance to look through the  
11 jury instructions. Whether anybody is interested in  
12 a duress, I am sort of skeptical that anybody wants  
13 that, but I haven't looked to see. I mean, once you  
14 sort of go that direction, you're kind of signaling  
15 to the jury that: I did it, but here's the reason I  
16 did it.

17 But I can think of other reasons why it  
18 goes to the factual voluntariness of the statement.  
19 And those factors that we're going to put in the  
20 jury instructions. So I'm inclined to allow it.  
21 But I'll think about it.

22 MS. ARMIJO: Your Honor, we did think  
23 about it, and we just would rather continue and  
24 finish with Bryan Acee because, if not, it's just  
25 going to give them -- he's already stopped one

1 cross-examination. This would be stopping another  
2 cross-examination, just continue to drag him on.  
3 We'd rather just finish with him.

4 THE COURT: Well, I think this is largely  
5 the defendants' case at this time, so I'm going to  
6 defer to them. If they've got witnesses and they're  
7 in agreement -- if there is disagreement, then I'll  
8 resolve it among the defendants. But if they're  
9 agreeable to culling him down, and getting some  
10 witnesses out of here, I'll defer to the defendants.  
11 Y'all got a disagreement among yourselves, or --

12 MS. FOX-YOUNG: I think the agreement is  
13 just that I was going to finish examining Agent Acee  
14 and then --

15 THE COURT: And that's when the break  
16 would occur?

17 MS. FOX-YOUNG: Yes, Your Honor.

18 MS. JACKS: Correct, Your Honor. My  
19 understanding is we are all in agreement, and I  
20 appreciate that. I think we've put these witnesses  
21 through quite a bit of inconvenience already.

22 THE COURT: All right. We'll let Ms.  
23 Fox-Young finish up, and then we'll take a break,  
24 and then we'll come back and finish up Mr. Acee at  
25 another point.

1           Let me, while -- well, we're out of time.  
2 I was going to give you a few case cites to looking  
3 at this Count 8 on Mr. Baca, but I'll try to find  
4 another time to do that.

5           All rise.

6           (The jury entered the courtroom.)

7           THE COURT: All right. Mr. Acee, I'll  
8 remind you that you're still under oath.

9           Ms. Fox-Young, if you wish to continue  
10 your direct examination of Mr. Acee, you may do so  
11 at this time.

12           MS. FOX-YOUNG: Thank you, Your Honor.

13           THE COURT: Ms. Fox-Young.

14 BY MS. FOX-YOUNG:

15           Q. Agent Acee, before we went to lunch, I  
16 think you had just testified that you became -- you  
17 were made aware by Roy Martinez, the information  
18 that Billy Cordova had told him that he shot Sammy  
19 Chavez. Do you remember that?

20           A. Yes.

21           Q. And that that was over a \$100 debt to  
22 Gerald Archuleta or Styx?

23           A. Yes.

24           Q. And you also -- you were made aware of  
25 information having to do with Billy Cordova and the

1 murder of Sammy Chavez before that interview with  
2 Roy Martinez, weren't you?

3 A. Yes.

4 Q. You remember that you did a debrief with  
5 Freddie Quintana in the summer of 2015 in August?

6 A. Yes.

7 Q. You learned something similar from him,  
8 didn't you?

9 A. I believe so.

10 Q. Do you remember exactly what you learned  
11 from Freddie Quintana?

12 A. No, ma'am.

13 Q. Well, if I represented to you that your  
14 report indicated that Mr. Quintana told you that  
15 Billy Cordova participated in the killing of Sammy  
16 Chavez at a park in Albuquerque, would you think  
17 that's the truth?

18 MR. CASTELLANO: Your Honor, I object. If  
19 she's going to refresh recollection, she can show  
20 the witness the document.

21 THE COURT: Why don't you do it the  
22 traditional way?

23 MS. FOX-YOUNG: I'm happy to refresh him,  
24 Your Honor.

25 THE COURT: All right.

1 BY MS. FOX-YOUNG:

2 Q. So you recall this interview in August of  
3 2015. Do you remember talking to Freddie Quintana  
4 about Billy Cordova?

5 A. No.

6 Q. Okay. Will it help you remember if I show  
7 you your 1023 form?

8 A. Yes, ma'am. Thank you.

9 Q. So, Agent Acee, just take a look at that  
10 section that I've highlighted with regard to Billy  
11 Cordova.

12 A. Okay.

13 Q. Does that help you remember the  
14 conversation that you had with Freddie Quintana  
15 about Billy Cordova and the Sammy Chavez murder?

16 A. Yes.

17 Q. What did you learn about Billy Cordova's  
18 involvement in the murder?

19 A. Quintana told me that he believed Cordova  
20 killed Sammy Chavez and left him in a park in  
21 Albuquerque.

22 Q. And he told you a little bit more than  
23 that, didn't he, about what Cordova told him?

24 A. Could you point it out to me, ma'am?

25 Q. Did he tell you that Cordova actually

1 admitted the murder to him?

2 A. Yes.

3 Q. And you included that in your report.

4 Now, I don't want to confuse anybody. I told you  
5 this is a 1023 report. That's different than a 302  
6 report, right?

7 A. It is.

8 Q. In layman's terms, can you tell me what  
9 the difference is?

10 A. Sure. Once a person is opened as an  
11 informant, we'll still write it in a 302. But we  
12 also include it in a specific report that's just  
13 attributed to that informant, and that form happens  
14 to be a 1023. So oftentimes you'll see where I have  
15 a 302, and the 1023 matches it exactly. And we're  
16 just duplicating it so that -- it's just a Bureau  
17 procedure to make sure that it's also listed under  
18 that informant, in their informant file.

19 Q. Okay. And this information happened to be  
20 contained in your 1023, right?

21 A. Yes, ma'am. Yes.

22 Q. And you also learned from at least one  
23 other person -- maybe more -- but at least one other  
24 person in the course of your investigation in 2015,  
25 about how and why Billy Cordova was involved in the

1 murder of Sammy Chavez. Do you recall there was  
2 another person?

3 A. No.

4 Q. You don't recall discussing Billy Cordova  
5 and the Sammy Chavez murder with anyone?

6 A. I've done that with a lot of people. But  
7 I'm just not sure which one you're referring to.

8 Q. Tell me who else you remember talking to  
9 about Billy Cordova's involvement in the murder of  
10 Sammy Chavez.

11 A. Well, in trying to sort out the Sammy  
12 Chavez murder, which is still unsolved, there are  
13 usually three or four names that I bring up when I  
14 talk to SNMers. Billy is one of them.

15 Q. And I'm just asking specifically. You  
16 have ascertained information from sources about  
17 Billy Cordova's involvement in the Sammy Chavez  
18 murder, correct?

19 A. Yes.

20 Q. And one of those sources is Shadow, Roy  
21 Martinez?

22 A. Correct.

23 Q. And one of those sources is Freddie  
24 Quintana, who told you and the FBI that Billy  
25 Cordova admitted to murdering Sammy Chavez, right?

1 A. Yes.

2 Q. And do you remember -- and I know it's  
3 been a while, but do you remember any other specific  
4 source who told you that Billy Cordova killed Sammy  
5 Chavez?

6 A. Not off the top of my head, no.

7 Q. Do you remember any specific source who  
8 told you that Billy Cordova bragged about killing  
9 Sammy Chavez?

10 A. Not off the top of my head.

11 Q. If I showed you a report based upon your  
12 meeting with Sammy Griego in December 2015, would  
13 that help refresh your memory?

14 A. Yes, ma'am.

15 MS. FOX-YOUNG: Your Honor, may I  
16 approach?

17 THE COURT: You may.

18 A. Okay.

19 Q. So having looked -- and this is your  
20 report, right?

21 A. I just need to look at that second page.  
22 I think so. It's an FBI report.

23 THE COURT: While he's looking at that,  
24 let me see counsel up here at the bench.

25 (The following proceedings were held at the



1 bench.)

2 THE COURT: When I'm looking at these jury  
3 instructions, is the red line version the one that  
4 y'all agree on? Those changes you agree on?

5 MS. JACKS: Here's the situation: The  
6 instructions outlined in the letter, in answer to  
7 your question, we all have agreed on.

8 THE COURT: The ones in the letter and the  
9 red line is what?

10 MS. JACKS: The additional instructions --  
11 there are red lines throughout. The numbers we've  
12 agreed on in the letter we've agreed on. The other  
13 red-lined ones, ones that we haven't agreed on,  
14 we're in the process of reviewing and attempting to  
15 agree.

16 THE COURT: Okay.

17 MR. CASTELLANO: So there is no current  
18 agreement on the other red-lined items that are not  
19 in the letter.

20 THE COURT: Okay.

21 MS. JACKS: And the reason we left the red  
22 line in there is so that the Court could see the  
23 changes that are being proposed.

24 THE COURT: Okay. And do you think that  
25 y'all may agree to some of those?

1 MR. BECK: I think we may.

2 THE COURT: But the red lines are largely  
3 the defendants' proposals?

4 MS. JACKS: They are.

5 MR. CASTELLANO: They are the defendants'  
6 proposed changes.

7 MR. VILLA: The defendants all agree.  
8 It's just getting the Government --

9 MS. JACKS: That was Saturday's work.

10 THE COURT: Thank you.

11 (The following proceedings were held in  
12 open court.)

13 THE COURT: All right. Ms. Fox-Young.

14 MS. FOX-YOUNG: Thank you, Your Honor.

15 BY MS. FOX-YOUNG:

16 Q. Agent Acee, you took a look at this report  
17 from December 15, 2015. And it's your report,  
18 right?

19 A. Yes, it is.

20 Q. And this was based upon a debrief that you  
21 did with Sammy Griego?

22 A. Yes.

23 Q. And having looked at it now, you remember  
24 talking to Sammy Griego about Billy Cordova's  
25 involvement in the murder of Sammy Chavez?

1 A. Yes.

2 Q. And what did you learn from Sammy Griego?

3 A. Griego reported to me that, while housed  
4 with Billy Cordova at the RDC, which is the Central  
5 New Mexico Correctional Facility in Los Lunas, I  
6 believe in 2011, that Cordova said that he killed  
7 Sammy Chavez, because Chavez had messed with some of  
8 Cordova's girls. I'm not sure what that means.

9 Q. Right. So Sammy Griego told you that  
10 Billy Cordova actually bragged to him that he had  
11 killed Sammy Chavez for a personal reason, because  
12 he'd messed with one of his girls, right, or some of  
13 his girls?

14 A. All of that is correct, except I don't  
15 know if it's personal or not.

16 Q. Okay. You don't know if it's personal  
17 that it was one of Cordova's girl, correct?

18 A. Everything else I would agree with.

19 Q. You might not characterize that as  
20 personal?

21 A. Correct.

22 Q. But you do agree that Billy Cordova --  
23 according to Sammy Griego, Billy Cordova bragged  
24 about killing Sammy Chavez?

25 A. Yes.

1 Q. And you remember that when Billy Cordova  
2 took the stand last week, he absolutely denied  
3 shooting Sammy Chavez? Do you remember that?

4 A. Yes.

5 Q. And he also said something along the lines  
6 that he would never take credit for something he  
7 didn't do. Do you remember that?

8 A. I think he said that.

9 Q. With regard to murders, right?

10 A. Yes.

11 Q. It was his testimony that he wouldn't brag  
12 about murdering Sammy Chavez if he hadn't done it,  
13 right?

14 A. Yes.

15 Q. But you had information -- sitting here  
16 today, you and the FBI have information from sources  
17 like Sammy Griego that apparently Billy Cordova did  
18 brag about murdering Sammy Chavez, right?

19 A. According to Griego, yes.

20 Q. Right. And, in fact, in your experience,  
21 you said you've done at least 50 interviews related  
22 to this case, right?

23 A. At least. Maybe closer to 100. I'm not  
24 sure.

25 Q. And some of these sources you've talked to

1 upwards of half a dozen times, right?

2 A. Yes.

3 Q. Some many more times than that?

4 A. I don't think so.

5 Q. In any event, you've become awfully  
6 familiar with how things work among these gang  
7 members in the New Mexico prison system, right?

8 A. Yes.

9 Q. And you've actually learned that it's not  
10 terribly uncommon to brag about criminal conduct  
11 that you didn't participate in, right?

12 A. I can think of a couple of situations  
13 where guys have done that; and then, when I later  
14 interviewed them about it, to include playing the  
15 recordings, they said they were bragging about  
16 something they hadn't done.

17 Q. Right. But you heard Billy Cordova's  
18 testimony that that doesn't happen, right?

19 A. Did he say that? He said that --

20 Q. I'm asking what you remember him saying  
21 about bragging about murders that he didn't do.

22 A. I believe he said that wasn't a good idea,  
23 that people shouldn't do that, and that he wasn't  
24 involved in -- he didn't brag about Sammy Chavez.

25 Q. But that's not what Sammy Griego says,

1 right?

2 A. Correct.

3 Q. And that's not what Freddie Quintana says,  
4 right?

5 A. Right.

6 Q. And are you also aware, based upon FBI  
7 reports and work that the FBI has done in this case,  
8 that some people also say Billy Cordova bragged  
9 about killing Shane Dix?

10 A. I recall that coming up at least one time,  
11 yes.

12 Q. At least one source told you, "Billy  
13 Cordova bragged to me, or to somebody, that he  
14 killed Shane Dix"?

15 A. I just remember that that rumor was out  
16 there and that was something that we looked at.

17 Q. Do you think Billy Cordova killed Shane  
18 Dix?

19 A. No.

20 Q. How do you know that?

21 A. In summary, through the totality of our  
22 investigation. But another -- the person who called  
23 it has pled guilty to that. And Mario Montoya took  
24 me out to the scene of where that murder was, and  
25 walked us through it. So that's two people that

1 have admitted their responsibility in it. And then  
2 a third one is still facing trial.

3 Q. So in your estimation, if Billy Cordova is  
4 talking -- is telling people that he killed Shane  
5 Dix, he's bragging about a murder he didn't do?

6 A. If he's out there doing that, yeah. I  
7 don't put him at the scene. In fact, I think he's  
8 in custody at the time.

9 Q. And with respect to Sammy Chavez, do you  
10 think Billy Cordova shot Sammy Chavez?

11 A. I did for a long time. But the problem  
12 is, Corrections has him in custody at the time of  
13 the murder.

14 Q. Right. So if Sammy Griego and Freddie  
15 Quintana have him telling them that he bragged about  
16 the murder, and has taken ownership for it, he'd be  
17 bragging about a killing he didn't do, right?

18 A. If all of that is correct, yeah.

19 Q. Okay. And I think I asked you, through  
20 the course of your investigation you have learned  
21 that people do -- people in the SNM, people in the  
22 New Mexico prison system, do lay claims to things  
23 that they didn't do, right?

24 A. It has happened, yes. It's not really  
25 common.

1 Q. Oh, it's not common?

2 A. I don't think it's common. But I do agree  
3 with you that it's happened.

4 Q. Okay. And you're aware that sometimes  
5 people do that, brag about doing things they didn't  
6 do, for self-preservation?

7 A. That's probably a reason, yes.

8 Q. You know that you've testified before  
9 today, and answered questions along these lines with  
10 regard to people in the SNM bragging about things  
11 they didn't do, right?

12 A. I've testified a whole bunch in this case.  
13 I've probably talked about that. I'm not sure.

14 Q. Let me ask you this: Do you remember  
15 testifying in front of Judge Browning in this case  
16 on questioning by Marc Lowery, where Marc Lowery  
17 asked you: You had mentioned about consequences for  
18 taking credit for something you didn't do?

19 And you answered, "Yes."

20 Do you remember that?

21 A. Yes.

22 Q. And then you were asked: And what are  
23 some of the types of consequences? You said there  
24 were beatdowns, or what else?

25 Do you remember that question?



1 A. Yes.

2 Q. And you remember that you answered, "Well,  
3 in some cases some of the members told me they  
4 didn't really see it as a problem, and that it's a  
5 common occurrence to take credit for something they  
6 didn't do, or to brag."

7 Do you remember that?

8 A. Yeah, I agree with that.

9 Q. You're not walking back that testimony  
10 today?

11 A. No. I think we should clarify --

12 Q. Thank you, Agent Acee.

13 So we're talking about Sammy Chavez and we  
14 talked about Shane Dix, and Billy Cordova bragging  
15 about those murders. Are there any other murders  
16 that you know of that Billy Cordova bragged about,  
17 that he didn't do, other than those two?

18 A. I can't think of any, no.

19 Q. And so I think you testified that at the  
20 end of 2015, the first indictment in this case came  
21 down, right? That was the first phase?

22 A. Yes.

23 Q. And at the end of 2015, you went to see  
24 Billy Cordova at the Metropolitan County Detention  
25 Center, right?

1 A. I thought it was early 2016.

2 Q. January 2016?

3 A. Yes, ma'am.

4 Q. Okay. And so at the time that you went to  
5 see Billy Cordova, you testified that you were at  
6 MDC to see somebody else?

7 A. Yes.

8 Q. And you happened to engage with Billy  
9 Cordova on that same day?

10 A. Yeah. We didn't plan it, but we needed to  
11 salvage -- the way in which the correctional  
12 officers pulled out an informant we had up there,  
13 comprised the informant. So I asked them to pull  
14 everybody in the SNM pod, so it looked like we were  
15 talking to everybody.

16 Q. And you had Agent Neale with you?

17 A. Yes, I believe.

18 Q. And you had tasked Agent Neale with  
19 writing up what are called overt acts for the RICO  
20 case, right?

21 A. Yes, ma'am.

22 Q. And how many overt acts got ultimately  
23 written up for that case? Do you know?

24 A. In the superseding indictment, I think  
25 there is -- actually, I don't remember off the top

1 of my head -- 256 maybe, 254.

2 Q. More than 250?

3 A. Yes.

4 Q. And as of the time, the day that you met  
5 Billy Cordova, in January 2016, one of those overt  
6 acts that you were looking at was on Sammy Chavez,  
7 right?

8 A. Yes. I was looking at Billy Cordova for  
9 that.

10 Q. And one was Shane Dix?

11 A. I'm not sure it was. We ruled him out  
12 pretty quick.

13 Q. Let's go back to Sammy Chavez. I know  
14 it's your testimony that Billy Cordova did not pull  
15 the trigger and kill -- as far as you know -- and  
16 kill Sammy Chavez, but you think he was involved in  
17 that murder, right?

18 A. Yes, I think he gave some advice to the  
19 person that shot him. I mean, it's still open.  
20 We're looking at a lot of angles on that.

21 Q. And you were looking at charging him; that  
22 was one of the overt acts for the RICO case, was the  
23 Sammy Chavez murder?

24 A. You mean that loosely, like in planning  
25 it? Those could be overt acts, and we would

1 definitely include those.

2 Q. I think you've previously testified that  
3 you were looking at Billy Cordova on the Sammy  
4 Chavez murder, in terms of that RICO case and those  
5 overt acts. I'm just confirming that.

6 A. I have always looked at Billy Cordova in  
7 that homicide, yes.

8 Q. And you were also looking at Billy Cordova  
9 for his assault on his wife, Crystal Salas, which  
10 you thought was gang-related, right?

11 A. Yes.

12 Q. And that was also an overt act?

13 A. Yes.

14 Q. And that's the case where Mr. Cordova  
15 punched Crystal Salas repeatedly, broke ribs, caused  
16 internal bleeding; is that right?

17 A. I don't know what the specific injuries  
18 were, but he beat her up pretty good.

19 Q. Well, you heard his testimony.

20 A. I heard him say "Yes" a lot to the  
21 questions he was asked, yes, about that. I don't  
22 actually know what the injuries to her were.

23 Q. Okay. Well, you heard him admit that he  
24 inflicted those injuries?

25 A. Yes.

1 Q. On the stand last week?

2 A. Yes.

3 Q. So Agent Neale had included that as one of  
4 the overt acts that you were looking at?

5 A. Yes.

6 Q. And you also knew, didn't you, that Billy  
7 Cordova had waterboarded people? He described for  
8 the jury what that consisted of?

9 A. I didn't know that until he told us that.

10 Q. Okay. You learned that later?

11 A. Yes.

12 Q. And you learned that he had wanted Javier  
13 Molina hit?

14 A. That was not something I knew when we were  
15 working on the overt acts.

16 Q. What other criminal conduct did you know  
17 about with regard to Billy Cordova in January 2016?  
18 How many other murders?

19 A. I wanted to include the murder that he was  
20 at MDC on, which he went to trial, and I think it  
21 was a manslaughter. I considered that gang-related,  
22 based on what I knew about it at the time.

23 Q. And who was the victim in that case?

24 A. I don't recall the man's name, but it was  
25 someone that was in a feud with one of Billy's

1 family members.

2 Q. Was that Ray Gurule?

3 A. I'm sorry, I don't --

4 Q. So Sammy Chavez and that murder. What  
5 others?

6 A. Anything that was in his criminal history  
7 we were looking at including as overt acts, if we  
8 thought they were gang-related or could further his  
9 status in the gang.

10 Q. Crystal Salas' assault, correct?

11 A. Yes.

12 Q. Do you remember any others specifically?

13 A. Some drug dealing. But if you're asking  
14 me specifically about murders, I think that's it.

15 Q. What drug dealing activity were you going  
16 to include in the RICO case with regard to Billy  
17 Cordova?

18 A. Any drug dealing we could prove.

19 Q. Did you have some?

20 A. Yes.

21 Q. And what was that?

22 A. I'd have to look at his NCIC, his criminal  
23 history again.

24 Q. But you know that, in January 2016, you  
25 were going to go after him for dealing drugs in this

1 RICO case?

2 A. As well as other crimes.

3 Q. What else?

4 A. Any assaults that we could articulate.

5 And this is just the FBI presenting this. Of  
6 course, it goes through a bunch of approvals. But  
7 what I had tasked Neale with was any crime that we  
8 reasonably could tie to gang activity or furthering  
9 his reputation to either join the gang or stay in  
10 the gang, mainly.

11 Q. Okay. And so we talked about one assault,  
12 that was beating up his wife, and that you  
13 considered furthering his reputation, right?

14 A. Given the circumstances, yes. Normally,  
15 we wouldn't include a domestic violence, but this  
16 was specific because his wife had engaged in a  
17 romantic relationship with another member. We knew  
18 that historically had great significance to the SNM,  
19 and we believed that he beat her up because of that.

20 Q. So you were writing that up as one of the  
21 overt acts?

22 A. Yes.

23 Q. Were there other assaults? And if you  
24 don't remember specifically, that's fine. But do  
25 you remember if there were others?

1           A.    I think that there were quite a few overt  
2 acts. We were also looking at letters, inter-prison  
3 letters with other members.

4           Q.    Okay. And at that point, in the course of  
5 this case, the RICO case, death penalty was on the  
6 table, right? At the beginning of 2016, it was a  
7 death case?

8           A.    For other -- for VICAR defendants? I  
9 believe it was.

10          Q.    The RICO case.

11          A.    Well, no, ma'am. I mean, the RICO case  
12 hadn't been charged, so death penalty is not on the  
13 table.

14          Q.    The VICAR case was a death penalty case?

15          A.    Yes, it was still on the table.

16          Q.    And you were getting ready to charge the  
17 RICO case the same way? I understand that you and  
18 the FBI don't make the charging decision.

19          A.    So in the RICO case, yes, any allegation  
20 where there's death, where there's a murder, the  
21 death penalty could be applied.

22          Q.    So, in January 2016, you were looking at  
23 Billy Cordova for at least two murders, multiple  
24 assaults, drug dealing, and other criminal conduct  
25 for this RICO case, for which the death penalty was



1 on the table, correct?

2 A. No. All of that is correct except the  
3 death penalty part.

4 Q. Because it hadn't been charged yet?

5 A. Right. And, I mean, that decision is made  
6 by the Attorney General himself or herself.

7 Q. I understand that you don't make that  
8 decision. But at that time, there were SNM  
9 defendants facing the death penalty?

10 A. Yes.

11 Q. And so you went with Billy Cordova, and I  
12 think your testimony at a prior hearing was that,  
13 upon meeting with him and talking about what he  
14 might be able to do for the Government in this case,  
15 you directed Agent Neale to stop writing up overt  
16 acts in the RICO case on Billy Cordova. Do you  
17 remember that testimony?

18 A. At some point I did. I don't know that it  
19 was at the initial meeting. But at some point I  
20 definitely did.

21 Q. Maybe soon after?

22 A. Yes.

23 Q. And so is it your testimony today, to this  
24 jury, that even though the death penalty was on the  
25 table for the SNM defendants, you never mentioned

1 that to Billy Cordova?

2 A. I don't think I've ever said that.

3 Q. You don't think you have? You heard Billy  
4 Cordova's calls last week with his family, where he  
5 told the people he's closest to in the world that  
6 the federal government did threaten him with the  
7 death penalty? You heard that, right?

8 A. I did.

9 Q. And the death penalty was on the table in  
10 January 2016, but it's your testimony you never said  
11 anything about that?

12 A. Well, I think you're telling me I never  
13 said that.

14 Q. I'm just asking you what your testimony  
15 is.

16 A. I don't know that I came out and said  
17 that.

18 Q. Is it also your testimony that you never  
19 mentioned a life sentence, the possibility of a life  
20 sentence to Billy Cordova?

21 A. I'm not sure.

22 Q. And you heard those calls where he told  
23 his family that, right?

24 A. I think -- yes, I think he did say that.

25 Q. Wouldn't it be pretty important to

1 remember whether or not you told a government  
2 witness that they could be facing the death penalty  
3 or a life sentence?

4 A. Not necessarily.

5 Q. It's not an important detail?

6 A. Well, if Billy Cordova were the only  
7 person I interviewed, I'd probably remember a lot  
8 more about my conversation. But, as I said, I've  
9 interviewed somewhere between 50 and 100 of these  
10 guys. And each time one of them gets out of prison,  
11 I'm at their parole office to meet them and talk to  
12 them.

13 Q. Okay. But you heard what he told his  
14 family soon after the meeting with you, right; that  
15 you did threaten him with the death penalty and with  
16 a life --

17 A. I --

18 Q. No, I'm just asking if you heard that  
19 call.

20 A. Where I threatened him? No, I didn't hear  
21 that.

22 Q. The federal government threatened him?

23 A. He did mention that.

24 Q. And is it your testimony that you never  
25 threatened to charge his wife, Crystal Salas?

1           A.    No, I've never mentioned at all anything  
2   like that.

3           Q.    But you heard his testimony last week, and  
4   you heard the call where he said he was doing what  
5   he was doing because of threats on his -- partly  
6   because of threats on his wife, his family? Do you  
7   remember that?

8           A.    Not real clearly. But he mentioned  
9   something like that. I don't know if that was  
10   threats from us or threats from the gang.

11          Q.    I'm just asking if you remember hearing  
12   that telephone call?

13          A.    I remember hearing a telephone call, yes.

14          Q.    So even though you had evidence that Billy  
15   Cordova was implicated in multiple murders and  
16   assaults and drug dealing and other criminal  
17   activity, it all was washed away after you met with  
18   him in January 2016, right?

19          A.    No.

20          Q.    You didn't tell him that you weren't going  
21   to charge him in the RICO case?

22          A.    Not at that time, no, because I still  
23   pushed to charge him. Nor did I have evidence at  
24   that time of the homicides you just mentioned. I  
25   had informants saying that they'd heard that.

1 That's not evidence.

2 Q. Do you remember your earlier testimony  
3 that you told Billy Cordova -- that you told Agent  
4 Neale in front of Billy Cordova to stop writing up  
5 overt acts because he wouldn't be charged in the  
6 RICO case based upon his work for the Government?  
7 You don't remember that?

8 A. That's not how I said it, no.

9 Q. How did you say it?

10 A. I introduced him to Agent Neale, and I  
11 told him, "This is the guy I've assigned to work the  
12 RICO on you."

13 Q. And you certainly left Billy Cordova with  
14 the impression that if he were to work for the  
15 Government, all that would wash away, didn't you?

16 A. No. I got Billy Cordova an attorney  
17 because I wanted to charge him.

18 Q. Okay. And so after that meeting at the  
19 Metropolitan Detention Center, you later met with  
20 him at the FBI office in Albuquerque, right?

21 A. Yes.

22 Q. And who was at that meeting?

23 A. MDC staff brought him there; STIU staff  
24 took him to the prison. So those two entities were  
25 there, as well as FBI agents.

1 Q. Okay. And that's when you talked to him  
2 in greater detail about what he might be able to do  
3 for the federal government, right?

4 A. When I tasked him with doing recordings at  
5 the penitentiary.

6 Q. Okay. And that's when you made  
7 arrangements to place Billy Cordova in a cell in  
8 solitary confinement right next to Rudy Perez,  
9 right?

10 A. No.

11 Q. You didn't make those arrangements?

12 A. Not the way you're categorizing it, no.

13 Q. When did you make the arrangements?

14 A. I asked that he be placed near Herrera and  
15 Perez. And that's the extent of it. How the  
16 Department of Corrections maneuvered that, I didn't  
17 have input on.

18 Q. Okay. And you recall testifying earlier  
19 today that Eric Duran's placement was at your  
20 request, right?

21 A. No. The return of Anthony Ray Baca.

22 Q. But my question is: Do you remember  
23 testifying that Eric Duran's placement was at your  
24 request?

25 A. No.

1 Q. Well, I can go back and pull the  
2 transcript.

3 A. Baca's was, not Duran's. Duran was  
4 already there.

5 Q. The placement of Baca next to Duran was at  
6 your request?

7 A. Yes.

8 Q. Okay. And the placement of Billy Cordova  
9 next to Rudy Perez was at your request, right?

10 A. Yes.

11 Q. Okay. So two days after that second  
12 meeting with Billy Cordova at the FBI office, Billy  
13 Cordova lands at the Penitentiary of New Mexico in a  
14 cell next to Rudy Perez, right?

15 A. Correct.

16 Q. And that was in February 2016, right?

17 A. Yes.

18 Q. Did you talk -- you heard Billy Cordova  
19 use the phrase "pressure points" in court, right?  
20 The pressure points he used on Rudy Perez?

21 A. I have heard him talk about that.

22 Q. Is that a phrase he got from you, or is  
23 that his own language?

24 A. That's his own language.

25 Q. So that's when Billy Cordova used the

1 pressure points on Rudy Perez, right, that period of  
2 time? This is Billy Cordova's own testimony. You  
3 remember that?

4 A. Yes. I'm just struggling to remember what  
5 the pressure points were.

6 Q. Well, I'll remind you. Billy Cordova  
7 testified at this trial, and also previously at a  
8 hearing where you were present, that he took  
9 advantage of the fact that Rudy Perez thought the  
10 SNM was going to move on him. And Billy Cordova  
11 said he used that -- he used those rumors, he used  
12 that information, as a pressure point to extract the  
13 information that he wanted from Rudy Perez.

14 Do you remember that? I'm just asking if  
15 you remember that testimony; not what you think of  
16 it.

17 A. I remember him talking about that.

18 Q. So that happened in February 2016, right?

19 A. That Rudy and Billy were next to each  
20 other, yes.

21 Q. And those recordings were made in February  
22 2016?

23 A. Yes.

24 Q. Several months later, Billy Cordova was  
25 caught having sex with his wife during contact



1 visits, right?

2 A. Yes.

3 Q. That was at the end of 2016 and the  
4 beginning of 2017?

5 A. Yes.

6 Q. And we don't know how many times he had  
7 sex with his wife while he was in custody with the  
8 Department of Corrections, right?

9 A. I think we do.

10 Q. How many times?

11 A. I think it was six.

12 Q. We know six were recorded on camera?

13 A. How else would they have -- I believe it  
14 was six.

15 Q. We know there were at least six, right?

16 A. I believe it was six.

17 Q. Well, we don't know what wasn't recorded,  
18 right? I think Billy Cordova testified that he did  
19 it all the time. They'd find a way. They'd go to a  
20 bathroom. He had all kind of ways of having sex  
21 with his wife. Do you remember that?

22 A. I remember him saying that inmates had sex  
23 with people in the bathroom. I don't know that he  
24 said that he did with his wife.

25 Q. Okay. But you know about six times that

1 you can verify because there is video of it, right?

2 A. Yes.

3 Q. And were all six times in front of his  
4 children?

5 A. No.

6 Q. How many times in front of his children?

7 A. At least four. I'm just going off  
8 recollection of watching the videos.

9 Q. Okay. When did you learn about this  
10 misconduct?

11 A. When the Department of Corrections called  
12 me and told me about it. And I drafted a 302. I  
13 just didn't know I'd be asked about this today, so I  
14 don't have it in front of me.

15 Q. Okay. Well, you ultimately closed him as  
16 your government witness on January 13, 2017, right?

17 A. Yes, ma'am.

18 Q. And why did you close him?

19 A. He didn't follow instructions.

20 Q. Which instructions did he fail to follow?

21 A. I'd gone up and met with the CHSs, and I  
22 told them I didn't want any more problems up at the  
23 penitentiary between each other or between the  
24 staff. That instruction specifically. There's not  
25 an instruction, you know, in the FBI confidential

1 source manual about having sex with your wife while  
2 you're in custody. It doesn't get that specific.  
3 But the specific instruction is not to -- to go with  
4 the program, and not cause any problems up there.

5 Q. And he didn't do that, right?

6 A. No.

7 Q. And it's important that your informants,  
8 that your witnesses do follow instructions, right?

9 A. Yes.

10 Q. It's important that they follow your  
11 instructions in the course of carrying out their  
12 duties as government witnesses, right?

13 A. Yes.

14 Q. And it's important because you have to be  
15 able to rely on the information that they give you,  
16 right?

17 A. Yes.

18 Q. Because that's how you build your case,  
19 right?

20 A. One of the tools.

21 Q. Because you want to go after people who  
22 have done wrong, right? And then you're trying to  
23 collect the information that you need to do that,  
24 right?

25 A. Yes.

1 Q. And you knew that information would be  
2 reliable, right?

3 A. Otherwise, we're wasting our time.

4 Q. And so you didn't want to waste your time  
5 anymore with Billy Cordova after January 13, 2017,  
6 because he'd broken the rules, right?

7 A. I didn't want to give him any more money.  
8 That's why I closed him.

9 Q. Okay. You couldn't trust him anymore  
10 after that, right?

11 A. I don't agree with that.

12 Q. Okay. Sitting here today, can you still  
13 say that you trust Billy Cordova?

14 A. Yes, to a certain extent.

15 Q. To a certain extent?

16 A. Yes.

17 Q. So you say that you trust Billy Cordova  
18 and find him to be reliable?

19 A. Depends what the circumstance is.

20 Q. All right. Well, how about given the  
21 circumstance that Billy Cordova did not tell you the  
22 truth about -- did not tell you or the prosecutors  
23 in this case the truth about his drug use, and  
24 continued drug use until just before this trial?  
25 And does that cause you to question your trust in

1 him?

2 A. That's one of the areas that causes me  
3 concern.

4 Q. Okay. And does it cause you concern to  
5 know that Billy Cordova testified last week that his  
6 statements before this Court in December about his  
7 drug use were untrue, and that he made those  
8 statements under oath?

9 A. Yes. Anytime somebody lies under oath,  
10 that's a significant problem. It sounded like to  
11 me, from what I witnessed, that he was confused  
12 about the question, or he had some -- he had some  
13 difficulty with that question and understanding it,  
14 and only he would know what that was. I don't know.

15 Q. Well, I mean, if you want, we can go back  
16 and look at his testimony under oath at the end of  
17 last year. But I'll represent to you that he was  
18 asked about his drug use, and he testified that he  
19 hadn't used drugs in two years; and then we  
20 subsequently learned, during the course of this  
21 trial, that that was untrue, and that he had been  
22 using drugs only weeks before he made those  
23 statements in court.

24 Do you remember that?

25 A. If what you're representing is true, then

1 that's a problem.

2 Q. Pretty simple questions, right?

3 A. The way you phrased it, yes.

4 Q. But that's not enough to break your trust  
5 in him?

6 A. Ma'am, I have some -- you asked me if I  
7 thought he's reliable. In some areas I think he is;  
8 and in some areas he's not.

9 Q. Sure. And you have discovered information  
10 during the course of your investigation that  
11 contradicts a lot of things Billy Cordova has told  
12 you, right? Let's just talk about the murder of  
13 Sammy Chavez, and what Billy Cordova told this judge  
14 and this jury last week, that he'd never brag about  
15 it. You learned from other individuals that he did,  
16 right?

17 A. According to those people, yes.

18 Q. Okay. Billy Cordova was not the only  
19 government witness who declined to follow your  
20 rules, right?

21 A. Oh, no, no, he was not.

22 Q. And you, as the case agent in this case,  
23 cannot snap your fingers and assure that these  
24 government witnesses will not continue to commit  
25 criminal conduct, right?

1 A. Absolutely not.

2 Q. And, in fact, that many of them have,  
3 right?

4 A. Yeah.

5 Q. I understand that you had already closed  
6 Jerry Armenta as a government witness for having sex  
7 in the contact room before this trial, right?

8 A. Yes. All the guys that were caught doing  
9 that, I closed right away.

10 Q. Is that the only reason Jerry Armenta was  
11 closed?

12 A. At that time, yes.

13 Q. At any time?

14 A. Well, if he wasn't already closed when the  
15 tablet thing came out, I would have closed him then.  
16 And I closed people for that.

17 If it was drugs, anytime I discover a  
18 reason to close them, I close them, because I don't  
19 want to give them money if they're not following  
20 directions.

21 Q. Okay. So upon learning that Jerry  
22 Armenta's tablet was used to search child porn,  
23 would that be enough for you to close him?

24 A. If he searched child porn and there was  
25 child porn, I would have charged him with it. But

1 yes, not only would I have closed him, but I would  
2 have charged him.

3 Q. When did you learn about that?

4 A. I learned that the tablets were  
5 compromised when Benjamin Clark's attorneys emailed  
6 me and said as much. And then I asked to meet in  
7 person so I could verify that, and have them explain  
8 it to me. So I wrote a report on it. I don't  
9 recall the exact date.

10 Q. Okay. Do you remember that Mark Myers  
11 with the Department of Corrections summarized those  
12 details and filed something in this court with  
13 respect to the compromised tablets?

14 A. I'm not sure what he might have written.

15 Q. Okay. Well, I know you said you don't  
16 remember when you actually learned that these  
17 government witnesses were accessing the internet and  
18 searching for child porn. Would it refresh your  
19 memory if I showed you the document that Mark Myers  
20 generated for the court on that subject?

21 A. It might. I don't know that I've seen it  
22 before. I can try it, sure.

23 MS. FOX-YOUNG: Your Honor, may I approach  
24 the witness?

25 THE COURT: You may.



1 Q. Agent Acee, have you ever seen this  
2 document?

3 A. No.

4 Q. All right. It's pretty short. Why don't  
5 you take a minute to look at it and see if it  
6 refreshes your memory as to when this all happened?

7 A. It does. Thank you.

8 Q. Okay. Having looked at it, can you tell  
9 me when you learned that government witnesses were  
10 misusing their tablets and accessing the internet?

11 A. On April 17, 2017.

12 Q. Okay. So that's almost a year ago, right?

13 A. Yes.

14 Q. And you said you learned this because one  
15 of the government witnesses' lawyers contacted you  
16 and told you, on April 17, 2017, that his client had  
17 actually been able to compromise the tablet?

18 A. I don't know that the attorney said it  
19 like that. The gist of it is, the attorney  
20 contacted me and asked that I go to the detention  
21 center with the attorneys -- there were two of  
22 them -- and meet with their client to talk about  
23 something.

24 Q. So you did that, right?

25 A. I did.

1 Q. On the same day?

2 A. That they asked me? No, it took a couple  
3 weeks to schedule it on their part. They had court  
4 and stuff.

5 Q. And in order to prove that the tablets had  
6 been compromised by these government witnesses, this  
7 witness actually sent you an email from his tablet,  
8 right?

9 A. Yeah. I didn't believe him, so I asked  
10 him to send me an email.

11 Q. Okay. So on that same day, on April 17,  
12 2017, you got an email that was sent from one of  
13 these tablets, right?

14 A. Yes. I got two emails.

15 Q. So the next day you got another email with  
16 a picture of one of the government witnesses inside  
17 his cell, right?

18 A. I think it was the same day. It was just  
19 like at three or four in the morning, yes.

20 Q. Was that Jerry Montoya?

21 A. No, I think it was Armenta.

22 Q. It was Jerry Armenta?

23 A. Yes.

24 Q. So Jerry Armenta told you, "Hey, look, I  
25 took a picture of myself with my tablet, and I can

1 send it to you," right?

2 A. No. Benjamin Clark sent me an email. I  
3 didn't ask Armenta for anything. I just woke up and  
4 had an email from the guy with a selfie. So, yeah,  
5 I deduced that he would do it, too.

6 Q. Okay. And so having learned that last  
7 April, what, if anything, did you do?

8 A. I notified the U.S. Attorney's Office.  
9 The Sandoval County Detention Center wanted to give  
10 me the tablets. But I didn't think I could take  
11 them because they belonged to defendants, and there  
12 was attorney-client protection. So I didn't take  
13 them. I consulted with the U.S. Attorney's Office  
14 about it.

15 I started preparing search warrants for  
16 the tablets. But then the decision was made that we  
17 should bring it up to Judge Browning and have the  
18 Court make a determination. And there were some  
19 pretrial hearings about that.

20 Q. That's right. And in the course of those  
21 pretrial hearings, defense counsel actually asked  
22 that these tablets be looked at, right, to see what  
23 it meant that they'd been compromised; isn't that  
24 right?

25 A. Yes, but not by the FBI. By the

1 Department of Corrections.

2 Q. Well, the FBI, in fact, never looked at  
3 these tablets, right?

4 A. The FBI wasn't allowed to look at these  
5 tablets. It requires a court order.

6 Q. Well -- and there was a court order that  
7 the tablets ultimately be sent to an expert, to look  
8 at them, because the FBI hadn't looked at them;  
9 isn't that right?

10 A. That is not right, no. The Court ordered  
11 that they could be looked at. I visited with  
12 defense attorneys, and I said the FBI can do it or  
13 their expert can do it. They requested that their  
14 expert do it, and I turned them over to the expert.

15 Q. Well, do you recall the representation by  
16 the prosecutors in this case that the FBI didn't  
17 have enough time, and it wasn't a priority to look  
18 at these tablets? Do you remember that?

19 A. What I represented to the prosecutors  
20 was --

21 Q. I'm just asking -- you've sat through  
22 court as the case agent in this case, right -- and  
23 I'll let you finish, Agent Acee -- but I want to  
24 know first, do you remember the prosecutors in this  
25 case representing to this Court that the FBI didn't

1 have time to look at these tablets, and there were  
2 just too many other resource needs, and they weren't  
3 going to look at them?

4 A. No.

5 Q. You don't remember that?

6 A. Not the way you're saying it, no.

7 Q. It's your testimony that the FBI couldn't  
8 look at them?

9 A. Not without legal process, no. The RCFL  
10 won't accept them without a warrant or a court  
11 order.

12 Q. Okay. And so the FBI never did look at  
13 them?

14 A. No. The decision was made to send them to  
15 the defense expert, who could get them done much  
16 quicker.

17 Q. Okay. Much faster than the Federal Bureau  
18 of Investigation.

19 So having learned on April 17, 2017, that  
20 government witnesses in this case were accessing the  
21 internet at the Walmart in Sandoval County and  
22 getting on Facebook, right --

23 A. That's what he said, yes.

24 Q. -- and trying to communicate with people  
25 outside of the prison?

1 A. I learned that today.

2 Q. Well, they communicated with you, right?

3 A. Yes.

4 Q. And you learned through the course of this  
5 trial about all the searches for porn and child  
6 porn, right?

7 A. I don't believe there has been any  
8 searches for child porn. There has been searches of  
9 porn.

10 Q. Teen porn. Excuse me.

11 A. There is a significant difference between  
12 the two.

13 Q. Okay. You don't classify teen porn as  
14 child porn?

15 A. I don't make the classifications. But  
16 child porn is illegal to possess, to distribute.  
17 Pornography is not. There is a significant  
18 difference between the two.

19 Q. I'll recharacterize that. You learned  
20 about the teen porn during the course of this trial?

21 A. Yes.

22 Q. And you also recall that as a result of  
23 Mr. Myers' filing, all of the defendants in this  
24 room had their tablets checked, and it was learned  
25 that they were not compromised. Do you remember

1 that?

2 A. The four gentlemen in here's tablets were  
3 not compromised.

4 Q. That's right.

5 All right. So getting back to Billy  
6 Cordova, you recall his testimony under oath, on  
7 December 15, 2017 -- and we've already talked about  
8 this -- that the SNM was going to move on Rudy Perez  
9 in February 2016, right? You told me that you  
10 remember that testimony?

11 A. I remember that there was a rumor, yeah.  
12 I don't know that it was that they were going to  
13 move on him, but there were concerns about it.

14 Q. You remember his testimony that he thought  
15 the SNM was going to move on him, right?

16 A. Rudy's testimony, or --

17 Q. Billy Cordova's testimony.

18 A. I don't remember.

19 Q. You don't remember that?

20 MR. CASTELLANO: At this point, I'm going  
21 to object about referring to other testimony in the  
22 case. If she has specific questions, I recommend  
23 she do that. But not referring to other people's  
24 testimony throughout this testimony.

25 THE COURT: Well, she can ask him if he

1 remembers. If he says "No," then he'll have to say  
2 "No." If he does remember, then she can build some  
3 question off of it. So I'm not going to make a  
4 blanket ruling that she can't refer to other  
5 testimony, because at times that's been helpful; and  
6 other times we're not getting anywhere. But I can't  
7 make a blanket decision on that.

8 Q. And, Agent Acee, you'll remember quite  
9 clearly that two days after that testimony, Billy  
10 Cordova had a phone interview with you which was  
11 memorialized in another 302, right?

12 A. I remember doing a phone interview with  
13 Mr. Cordova in his attorney's office.

14 Q. And he testified about that last week,  
15 too, right?

16 A. Yes.

17 Q. So this is two days after his testimony  
18 that the SNM was going to move on Rudy Perez, and he  
19 talks to you on December 15, 2017, over the phone,  
20 right?

21 A. I talked to him over the phone on that  
22 date.

23 Q. And he never said, during the course of  
24 that phone interview, that his testimony was  
25 inaccurate with respect to the SNM moving on Rudy



1 Perez, right?

2 A. I don't recall him telling me anything  
3 about inaccurate testimony.

4 Q. Right. He did, however, tell you  
5 something about the SNM suspecting that Rudy Perez  
6 had talked to the STIU, right?

7 A. I'd need to look at my report.

8 Q. He actually added to his testimony and  
9 gave some more information on that.

10 MS. FOX-YOUNG: Your Honor, may I  
11 approach?

12 THE COURT: You may.

13 Q. Agent Acee, I'm showing you your report  
14 from that day, December 15, 2017. Do you see the  
15 area I've marked?

16 A. The highlighted portion, or the blue?

17 Q. The highlighted portion. Does this  
18 refresh your memory about that interview?

19 A. Yes.

20 Q. And that was the interview where Billy  
21 Cordova didn't tell you, "No, I was wrong. I didn't  
22 really mean it when I said the SNM was going to move  
23 on Rudy Perez"? He didn't say that. He said  
24 something about the SNM suspecting that Rudy Perez  
25 had talked to the STIU, didn't he?

1 A. He explained why he thought that, yes.

2 Q. Then last Friday, when Billy Cordova was  
3 on the stand, he tried to say something a little bit  
4 different, didn't he? Do you remember that?

5 A. I do not.

6 Q. Were you in here for Billy Cordova's  
7 testimony?

8 A. I was seated right there, yes.

9 Q. You don't remember him trying to back off  
10 those statements?

11 A. I don't.

12 Q. Okay. At any point in the course of your  
13 investigation, have you investigated why Rudy Perez  
14 was transferred to PNM in Santa Fe?

15 A. I haven't investigated that. I'm aware of  
16 why he was transferred.

17 Q. Have you looked into the reasons?

18 A. No.

19 Q. Okay. That hasn't been a part of your  
20 investigation?

21 A. If I understand you correctly, you're  
22 asking me if I investigated why Rudy was moved from  
23 one corrections facility to another?

24 Q. Have you looked into that?

25 A. No.

1 Q. No. Have you looked into why Rudy Perez  
2 was not transferred back to the Southern New Mexico  
3 Correctional Facility in the fall of 2015 or the  
4 spring of 2016?

5 A. No.

6 Q. Okay. Do you know if anybody else has  
7 looked into that?

8 A. Not from the standpoint of the FBI  
9 investigating a crime, no.

10 Q. Well, let me put this way: Rudy Perez'  
11 location has been something of a focus for you in  
12 this case, right? I mean, you cared about where  
13 Rudy Perez was at PNM, because you made a request  
14 that Billy Cordova be placed next to him.

15 A. I've never cared where Rudy Perez is. I  
16 just wanted an informant next to him with a  
17 recorder. Doesn't matter to me.

18 Q. It's your testimony that you never looked  
19 into why Rudy Perez was not transferred to the  
20 Southern New Mexico Correctional Facility?

21 MR. CASTELLANO: Objection; asked and  
22 answered.

23 THE COURT: Overruled.

24 A. No, I don't care where Rudy Perez is  
25 housed. It doesn't matter to me. The objective is

1 to get the recordings.

2 Q. So you don't know why he wasn't moved to  
3 the Southern New Mexico Correctional Facility?

4 A. That's a different question. I know why  
5 he was moved to PNM.

6 Q. I'm asking if you know why he wasn't moved  
7 to the Southern New Mexico Correctional Facility in  
8 the fall of 2015?

9 A. No, I have no idea.

10 Q. Since Rudy Perez was charged in this case,  
11 have the prosecutors asked you to look into why Rudy  
12 Perez was not moved to the Southern New Mexico  
13 Correctional Facility in the fall of 2015?

14 A. No. Not in the way you're phrasing it,  
15 no.

16 Q. In any way?

17 A. Yes. There has been some conversation as  
18 to why he was moved to the Level 6. But I've never  
19 been asked, nor have I heard anyone discuss why he  
20 wasn't moved to Southern. I don't understand that.

21 Q. I just want to be clear, because I know  
22 there has been a lot of movement. After he went to  
23 Level 6, since that time, have you ever looked into  
24 why he was not moved back to the facility in Las  
25 Cruces?

1 A. No.

2 Q. Nobody has asked you to do that?

3 A. No.

4 Q. And you don't know if any other FBI  
5 personnel have done that?

6 A. No. Normally, when there is a request  
7 from the prosecutors, it comes to me, and I either  
8 do it or I assign it to someone else. And I don't  
9 recall assigning anything like that to anyone, nor  
10 do I recall doing it.

11 Q. Okay. I asked because you're the case  
12 agent, and you know what all the FBI personnel are  
13 doing in the Main, with regard to this case, right?

14 A. I try to. Not always.

15 MS. FOX-YOUNG: Your Honor, may I approach  
16 the witness?

17 THE COURT: You may.

18 MS. FOX-YOUNG: Your Honor, I'm marking  
19 what I'm going to call Defendants' Exhibit FW. And  
20 I'm going to show it to the witness.

21 MR. CASTELLANO: May I see the exhibit,  
22 please?

23 BY MS. FOX-YOUNG:

24 Q. Agent Acee, I'm showing you Defendants'  
25 Exhibit FW. I'll represent to you that this is

1 information that was contained in a filing made by  
2 the prosecutors in this case. Have you seen this  
3 language before?

4 A. I've seen the first half of it. I'm aware  
5 of the first half of it. I haven't seen the  
6 language. I don't know that I saw the filing, but  
7 I'm aware of this information about disciplinary.

8 Q. And you're aware that this information was  
9 contained in a filing that the prosecutors made in  
10 this case?

11 A. No.

12 MS. FOX-YOUNG: Your Honor, I'd like to  
13 move Defendants' Exhibit FW. This is an admission  
14 by the United States.

15 THE COURT: Any objection, Mr. Castellano?

16 MR. CASTELLANO: Yes, Your Honor. May we  
17 approach?

18 THE COURT: All right.

19 (The following proceedings were held at the  
20 bench.)

21 MS. FOX-YOUNG: Your Honor, this is a  
22 direct quote, but for the fact that "Defendant" has  
23 been replaced with the words "Rudy Perez." This is  
24 from the Government's response to our motion to  
25 suppress, in which the Government argued that Rudy

1 Perez was not transferred to the Southern New Mexico  
2 Correctional Facility for reasons of his own safety.

3 I would cite to the Court the Ganadonegro  
4 opinion, in which this Court held that a statement  
5 made by the prosecution -- and I can pull the case  
6 if the Court would like to see it -- a statement  
7 made by the prosecution in closing argument was an  
8 admission that could be used in the next trial. And  
9 a number of circuits have held that while statements  
10 by case agents are not necessarily statements by a  
11 party opponent, statements by Government lawyers  
12 certainly are.

13 This is a direct quote from their pleading  
14 filed in December of last year, I believe, or  
15 November.

16 THE COURT: If you want to do that, I  
17 think you've got to get the document. And we can  
18 redact it and mark it up, and then I can admit it.  
19 But I don't think you enter admission by the  
20 Government and change the quote, is the right way to  
21 do it.

22 MS. FOX-YOUNG: Can we use Exhibit FW as a  
23 placeholder? I have the document, and I can redact  
24 it at the --

25 THE COURT: I want to see it before you

1 do.

2 MR. CASTELLANO: There is a rule of  
3 completeness. And that may then cause us to file  
4 their motion as part of pleadings in this court as  
5 an admission by party opponent to --

6 THE COURT: I'll take a look at what  
7 you've got. I probably will let you admit something  
8 if it's an accurate statement. You can put in a  
9 document that says that. But I'm not going to let  
10 you create a document and say, "Well, this is what  
11 they admitted," because that's not quite what  
12 they've said.

13 MS. FOX-YOUNG: We can prepare a redacted  
14 document for the Court to look at.

15 MR. VILLA: Just for clarification, I  
16 don't know how long the response was.

17 MS. FOX-YOUNG: Seven pages.

18 MR. VILLA: You want us to redact  
19 everything?

20 THE COURT: I think you probably need to  
21 show it to the Government, and let's see how much  
22 the Government wants in and how much -- if they  
23 don't want anything in, probably I need a page. If  
24 they're going to want more, I'm going to have to  
25 list it out and see what you can work out.



1 MR. CASTELLANO: Another issue, Your  
2 Honor, is one of the bad acts noticed up was a bad  
3 act by Rudy Perez, I think in 2000 -- I forget the  
4 year, I'll bring it to the bench -- which would be a  
5 further reason why he was also disciplined and  
6 remained possibly in segregation. So I think it's  
7 also going to bring in a bad act with it. I can  
8 bring the bad act to the bench if we need to discuss  
9 it later.

10 THE COURT: All right.

11 (The following proceedings were held in  
12 open court.)

13 THE COURT: All right. Ms. Fox-Young.

14 MS. FOX-YOUNG: Thank you, Your Honor.

15 BY MS. FOX-YOUNG:

16 Q. All right. Agent Acee, we've talked about  
17 several of the government witnesses in this case,  
18 and specifically Mario Rodriguez. Mario Rodriguez  
19 told you, in the context of your meeting with Ron  
20 Sanchez and other personnel, that becoming a  
21 government witness and going into the fed was the  
22 best option for him. You talked about that earlier,  
23 right?

24 A. For him or for Ronald. I'm not sure which  
25 he was referring to.

1 Q. Well, Mario Rodriguez described it as the  
2 best option, right?

3 A. In his opinion, yes.

4 Q. And you also heard Billy Cordova testify  
5 that it was the best option for him, did you not?

6 A. He did say things like that, yes.

7 Q. And you've also testified just a few  
8 minutes ago that, although these witnesses can say  
9 that they've dropped out of the gang, and they've  
10 abandoned criminal conduct, there is nothing that  
11 you or the FBI can do to stop them from continuing  
12 to commit criminal conduct, right?

13 A. No.

14 Q. And, in fact, a number of these government  
15 witnesses have continued for months and months and  
16 months while the Government has been paying them to  
17 commit criminal conduct, right?

18 A. No.

19 Q. Shall we reflect on Tim Martinez'  
20 continuing drug dealing? Do you remember that  
21 testimony?

22 A. Yes.

23 Q. That was after he became a government  
24 witness, right?

25 A. I think he's been a drug dealer most of

1 his adult life.

2 Q. That wasn't my question. Was he dealing  
3 drugs after he became a government witness, by his  
4 own admission?

5 A. Yes.

6 Q. And that was in Sandoval County?

7 A. Yes.

8 Q. And Mr. Billy Cordova has continued to use  
9 drugs, as we learned when he was on the stand, since  
10 he became a government witness, right?

11 A. He has.

12 Q. And Jerry Montoya had sexual relations  
13 with a correctional officer, right?

14 A. Yes.

15 Q. That's also criminal conduct, right? It  
16 was his response that it was criminal conduct. I'm  
17 not asking you to opine on the law.

18 A. I didn't know that was a question. I'm  
19 sorry.

20 Q. Was it criminal conduct when Jerry Montoya  
21 had sexual relations with a correctional officer?

22 A. I can't think of what law that might have  
23 been a violation of, but he shouldn't have been  
24 doing it.

25 Q. You know that it is a violation for a

1 correctional officer to have sex with an inmate,  
2 right?

3 A. I'm not that familiar with PREA, but  
4 that's the only one I can think of that it might  
5 fall under.

6 Q. And it was criminal conduct when Jerry  
7 Montoya used that same correctional officer to bring  
8 in contraband, including drugs for him, right?

9 A. That is a violation of the law.

10 Q. And, if in fact Mr. Jerry Armenta accessed  
11 teen porn, that's a criminal violation, too, right?

12 A. Depends on the age of the child. I mean,  
13 18 and 19 is not.

14 Q. Oh, okay. So if some of the individuals  
15 pictured in the porn were 17, it would be a criminal  
16 violation, correct?

17 MR. CASTELLANO: Your Honor, that  
18 misstates the law.

19 THE COURT: Well, if he knows, he can  
20 answer. If he doesn't know, he can just say he  
21 doesn't know.

22 A. I'm not certain of that.

23 Q. So we just asked a few of the government  
24 witnesses. But you're aware that there has been a  
25 pattern of ongoing criminal activity by these

1 witnesses working for the Government since the FBI  
2 opened them as informants, right?

3 A. I am now, yes.

4 Q. When did you start to become aware?

5 A. Which informant do you want to talk about?

6 Q. Well, when did you become aware of the  
7 pattern of criminal activity of these government  
8 witnesses?

9 A. These guys have never stopped committing  
10 crimes or doing bad things.

11 Q. Okay. All right. Now, some of the  
12 government witnesses only have a short time  
13 remaining on their state sentences, right?

14 A. Yes. And some have completed their state  
15 sentences.

16 Q. And we heard about that from Jerry  
17 Montoya, right?

18 A. Yes.

19 Q. And we heard Jerry Montoya talking to  
20 family members about the prospect that he might just  
21 get time served in this case, right? Do you  
22 remember Jerry Montoya's testimony and the phone  
23 calls in which he told his family the Government  
24 was -- that the prosecutors were going to come in  
25 and ask for time served?

1           A.    No, I don't remember it like that.  He  
2   talked about that, but I don't know that that's what  
3   he said.

4           Q.    Do you remember that that's what he told  
5   his family on the phone?

6           A.    Like I said, he said something about that,  
7   but I don't know that he said the prosecutors  
8   represented that.

9           Q.    He said the Government was going to come  
10  and ask for time served, didn't he?

11          A.    Again, he talked about that.  I just don't  
12  know that that's exactly what he said.

13          Q.    And he's not the only one for whom you  
14  heard these calls.  These men, one after another,  
15  told their families about the promises that you and  
16  the prosecutors have made to them, right?

17          A.    No, that's not true.

18          Q.    You didn't hear other calls like that?

19          A.    I heard other telephone calls where these  
20  guys represented something as fact that was not.

21          Q.    Well, that's my question, if you remember  
22  hearing those calls where they told their friends  
23  and family about these promises?

24          A.    They represented to their family that  
25  certain things were going to happen that weren't

1 discussed by us.

2 Q. I'm just asking if you remember hearing  
3 those calls in this court, in this trial.

4 A. You're asking me, and you'll ask two  
5 questions in one. So part of that is "Yes," and  
6 part of it is "No." I remember that there were  
7 phone calls. You also said that the Government  
8 promised things. And we didn't. And I didn't hear  
9 them say that the Government promised anything.

10 Q. You didn't hear Jerry Montoya say that the  
11 Government was going to come in and ask for time  
12 served, and so were his lawyers?

13 A. He said something along those lines.

14 Q. Okay. And you didn't hear Lupe Urquizo  
15 say that the more people he brought to the table,  
16 the more time would be taken off his sentence?

17 A. I don't remember that.

18 Q. In any event, you would agree with me that  
19 the government witnesses who got on board and began  
20 cooperating early on sort of had the ability to  
21 write their own tickets in this case, right?

22 A. Absolutely not.

23 Q. Nobody could write their own ticket?

24 A. Defendants don't write their own ticket,  
25 no.

1 Q. So defendants in this case didn't have the  
2 option to decide whether they want to be charged  
3 federally or not?

4 A. I can think of two that did.

5 Q. Oh, you can. Who are those?

6 A. Frederico Munoz and Lupe Urquizo.

7 Q. Okay. I thought you just said that they  
8 didn't get to write their own ticket?

9 A. They don't. What does that mean, to write  
10 your own ticket?

11 Q. All right. Well, do they get to write  
12 their own indictments?

13 A. No.

14 Q. Do they get to decide what charges were  
15 going to be brought against them?

16 A. Not exclusively, no. They -- those two  
17 specifically that I mentioned helped me determine  
18 what overt acts to charge them with, which ones they  
19 would admit to.

20 Q. Do you remember in the context of that  
21 meeting that you had, the one that was recorded with  
22 Mario Rodriguez and Ron Sanchez, discussing this  
23 very issue?

24 A. Yes.

25 Q. And do you remember that you actually



1 said, "I think the easiest charge would be a  
2 racketeering conspiracy, where it was -- there was  
3 some agreement with the Government that it would be  
4 capped at whatever time you owed the state."

5 Do you remember saying that?

6 A. Yes.

7 Q. And then do you remember saying, "So it's  
8 not like you -- I'll tell you who did that. Playboy  
9 did it. He can tell you all about it."

10 Do you remember that?

11 A. Yes. Playboy is Frederico Munoz.

12 Q. Playboy is Frederico Munoz. And then do  
13 you remember Mario Rodriguez saying, "Right, he  
14 wrote his own, his own" --

15 Do you remember that?

16 A. Yes.

17 Q. And then your immediate response, "He  
18 wrote it. Yeah, pretty much."

19 Do you remember that?

20 A. I do.

21 Q. And then do you remember going on to  
22 discuss Lupe Urquizo, and that Mario Rodriguez  
23 agreeing that Lupe Urquizo had implicated himself  
24 just so he could do his time in the feds? Do you  
25 remember that?

1 A. Yes.

2 Q. So when you talked about Playboy,  
3 Frederico Munoz, "writing his own -- yeah, pretty  
4 much writing it," what was he writing for himself,  
5 if it wasn't the charges?

6 A. Well, to be clear, Frederico Munoz doesn't  
7 write any legal documents. When I'm sitting talking  
8 with SNM Gang members, versus testifying in court,  
9 my language is sometimes very different.

10 So what I was telling Ronald is that  
11 Frederico wrote his own indictment, meaning he sat  
12 down with the FBI and he confessed all of his  
13 crimes, to be used as overt acts.

14 So my representation to gang members was  
15 that this guy rose his hand. And Frederico did. I  
16 mean, he wanted to be charged in the feds. He  
17 wanted out of the state. That is true. But he  
18 didn't write his own indictment.

19 Q. Okay. But he got to make the decision  
20 about how he was going to be charged in the feds,  
21 right?

22 A. Did you say he got to?

23 Q. Yes.

24 A. He wanted to be charged in the feds, and  
25 he participated with his attorney in what overt acts

1 we used.

2 Q. And that's what you meant when you said,  
3 "He wrote it, yeah, pretty much," right?

4 A. Yes.

5 Q. Okay. And with respect to Lupe Urquizo,  
6 you and Mario Rodriguez agreed he pretty much did  
7 the same, because he wanted to serve time in the  
8 feds, right?

9 A. Yes.

10 Q. And the reason that he wanted to serve  
11 time in the feds was the same reason Mario Rodriguez  
12 wanted to, right? He wanted to be in Tucson or  
13 Florida, he wanted contact visits, and he wanted to  
14 do easy time, right?

15 A. Well, there's a lot of questions there. I  
16 don't know -- their interpretation is it's easy  
17 time. I don't know if they get contact visits. And  
18 the defendants certainly don't pick what prison they  
19 go to.

20 Q. Do you remember during Billy Cordova's  
21 testimony, he talked about conversations with you  
22 about where he would make the decision whether he  
23 was going to be in the state or the fed? Do you  
24 remember that?

25 A. No.

1 Q. You don't remember him saying that, yes,  
2 he was going to meet with you, and it would be  
3 his -- he had to decide whether he wanted to go to  
4 the state or the fed?

5 A. You're saying he testified to that?

6 Q. Do you remember his testimony?

7 A. I don't remember that discussed.

8 Q. Well, he did. He testified that --

9 MR. CASTELLANO: Your Honor, she's  
10 testifying.

11 THE COURT: Ms. Fox-Young, hold on.

12 MS. FOX-YOUNG: Your Honor -- oh, I'm  
13 sorry.

14 THE COURT: You can't do that. You're not  
15 testifying.

16 MS. FOX-YOUNG: I understand. I was just  
17 going to say, I'll move on, Judge.

18 THE COURT: All right.

19 BY MS. FOX-YOUNG:

20 Q. Agent Acee, do you recall questioning  
21 about whether Mr. Cordova talked on the phone about  
22 meeting with you and telling you whether he was  
23 going to be going to the state or the fed?

24 A. I'm confused by your question. Could you  
25 say the first part again?

1 Q. Sure. You recall Billy Cordova testifying  
2 last week?

3 A. Yes.

4 Q. And you recall him being asked about  
5 conversations he had on the phone about his charges?

6 A. Yes.

7 Q. And he was also asked, was he not, about  
8 conversations that he had about meeting with you  
9 about those charges, right?

10 A. Yes. Attorneys asked him questions about  
11 that.

12 Q. And he was also asked whether ultimately  
13 it was going to be his decision whether he would go  
14 to the state or the fed, and he was going to tell  
15 you that, right?

16 A. I believe part of that is true, but I  
17 don't remember that line of questioning.

18 Q. Okay. With respect to all these  
19 government witnesses, a lot of promises and benefits  
20 have been afforded; would you agree with me?

21 A. No.

22 Q. Well, let's go through them. Tens of  
23 thousands of dollars have been paid to these  
24 government witnesses; isn't that right? Eric Duran  
25 alone received over \$40,000, right?

1 A. 46, yes.

2 Q. Do you know the sum total of monies that  
3 have been paid collectively to all the government  
4 witnesses in this case?

5 A. I could estimate. I don't know the exact  
6 amount.

7 Q. Is it accurate to say that it's tens of  
8 thousands of dollars?

9 A. It's more accurate to say it's around,  
10 probably, 70,000, 75,000.

11 Q. Do you know if the government witnesses  
12 have been issued 1099s in this case?

13 A. We don't do that.

14 Q. You don't issue 1099s?

15 A. The FBI does not.

16 Q. You don't know if they're going to pay  
17 taxes on that money?

18 A. They're advised that they're responsible  
19 to, but the FBI doesn't give informants 1099s.

20 Q. You've testified some about lump sum  
21 benefits, right?

22 A. I've answered some questions about it.  
23 The Department of Corrections lump sum? Because the  
24 FBI has a lump sum, and they mean different things.

25 Q. Well, Agent Acee, I just want to ask you

1 about lump sum benefits in this case.

2 A. I just want to answer honestly. I need to  
3 know which one we're talking about.

4 Q. So I don't know whether -- why don't you  
5 tell me, would you characterize the lump sum  
6 benefits that have already been given in this case  
7 as Department of Corrections lump sum benefits?

8 A. During the course of this investigation, I  
9 learned that the Department of Corrections has a  
10 lump sum award. I understand it to be for  
11 lifesaving. And that Eric Duran received two of  
12 those. The Department of Corrections felt that he  
13 earned them for saving the lives of Gregg Marcantel  
14 and Dwayne Santistevan.

15 Q. Agent Acee, would you just answer my  
16 question? Are they Department of Corrections lump  
17 sum or FBI lump sum benefits?

18 A. What I just explained was the Department  
19 of Corrections lump sum. The FBI has a lump sum,  
20 which means something entirely different.

21 Q. Okay. Have you afforded any FBI lump sum  
22 benefits in this case, or has the FBI afforded any  
23 of those benefits in this case?

24 A. Yes. But not to any of the individuals  
25 we've talked about.

1 Q. Who has received an FBI lump sum benefit  
2 in this case?

3 A. Off the top of my head, I can think of  
4 one, but I'm hesitant to give the name. I'd need to  
5 consult with the U.S. Attorney's Office before I do  
6 that, because the Department of Justice has some  
7 rules on that.

8 MR. CASTELLANO: I would object, Your  
9 Honor. If it's a dollar amount, that's one thing.  
10 But to protect the person's identity, I would ask  
11 that he not have to answer that.

12 MS. FOX-YOUNG: Your Honor, I think if the  
13 Court wants to consider it at the bench --

14 THE COURT: Let me hear what's going on.  
15 I'm not quite sure.

16 MS. FOX-YOUNG: We can do a voir dire at  
17 the bench.

18 THE COURT: Well, just come up and explain  
19 to me what the issue is first.

20 (The following proceedings here held at the  
21 bench.)

22 THE COURT: What were you expecting the  
23 answer to be?

24 MS. FOX-YOUNG: I just want to go through  
25 all the benefits that have been afforded the



1 witness.

2 THE COURT: No, you asked the question  
3 here: Who has received an FBI lump sum in this  
4 case?

5 MS. FOX-YOUNG: I didn't know there had  
6 been any. And the witness brought it up. I want to  
7 know who received one. I think if it's one of the  
8 witnesses testifying in this case --

9 THE COURT: Mr. Acee, come here.

10 MR. BECK: Your Honor --

11 MR. CASTELLANO: The real-time is playing  
12 on the tables.

13 MR. BECK: -- the real-time is playing on  
14 all the tables. We're worried about if a name is  
15 said at this point. That's the concern.

16 MR. VILLA: Only for the jury.

17 MS. FOX-YOUNG: Maybe we shouldn't do it  
18 in front of the jury. I don't want the jury to see.  
19 We're worried about the jury seeing the defendants'  
20 real-time. I don't think it's appropriate.

21 THE COURT: Turn off the mute button.

22 (The following proceedings were held in  
23 open court.)

24 THE COURT: All right. Ladies and  
25 gentlemen, let me meet with counsel and the parties

1 here in a minute. All right. We'll be in recess  
2 for a few minutes.

3 All rise.

4 (The jury left the courtroom.)

5 THE COURT: All right. Everyone be  
6 seated. How does this solve the other problem? It  
7 doesn't. We solved one problem. How do we solve  
8 the other?

9 MR. VILLA: We can close the real-time  
10 now.

11 THE COURT: Are you able to shut down  
12 real-time without a great deal of effort? Are you  
13 able to?

14 MS. JACKS: We closed ours, but now it's  
15 broken.

16 THE COURT: All right. Well, put a paper  
17 in front of it.

18 MS. JACKS: We all closed them. That's  
19 what we were told to do.

20 THE COURT: Are y'all satisfied now?

21 THE COURT REPORTER: I can't hear you.

22 THE COURT: Well, I'm going to mute the  
23 button up here at the front.

24 (The following proceedings were held at the  
25 bench.)

1 MR. CASTELLANO: We also have a reporter  
2 in here.

3 I think what he's going to tell the Court  
4 is that he's not certain he can answer that question  
5 as to this lump sum afforded without breaking FBI  
6 rules.

7 THE COURT: Well, advise me whether he's  
8 breaking the FBI rules.

9 MR. CASTELLANO: He knows. We don't know.

10 THE COURT: All right. Here's the  
11 question that's on the table, Mr. Acee: Who has  
12 received an FBI lump sum benefit in this case? So  
13 you must have said something earlier that indicated  
14 the question before is "Yes." But not any  
15 individual that we talked about. So let me ask  
16 this -- and maybe we can cut through this.

17 Have you -- has there been anybody that's  
18 been a witness in this case, anybody that's been an  
19 accomplice in this case, that received a lump sum  
20 benefit?

21 THE WITNESS: I can think of one. That's  
22 the one witness that is on the witness list that  
23 wasn't called.

24 THE COURT: Wasn't called? The  
25 defendants' list or the Government's?

1 THE WITNESS: The Government's.

2 THE COURT: And you didn't call them?

3 THE WITNESS: Didn't call them.

4 THE COURT: With that, do you need  
5 anything further?

6 MS. FOX-YOUNG: I think, if he implicates  
7 the defendants in this room, I'm comfortable with  
8 the Court hearing it in camera.

9 THE COURT: I guess I'm wondering what  
10 benefit is a name? Has that person been, to your  
11 knowledge, even identified in this courtroom by  
12 anybody's testimony?

13 THE WITNESS: No.

14 THE COURT: Do you recall the name coming  
15 up or anything in front of the jury?

16 THE WITNESS: No.

17 MS. FOX-YOUNG: Well, Your Honor, I could  
18 proceed with questioning without the name, and then  
19 I think --

20 THE COURT: Because it sounds like --

21 MS. FOX-YOUNG: We're entitled to know if  
22 he's on the Government's witness list.

23 THE COURT: I think he said he is.

24 MS. FOX-YOUNG: I think we're entitled to  
25 know the answer to the question as to what the

1 federal lump sum --

2 THE COURT: The answer is "Yes."

3 MS. FOX-YOUNG: -- and who received it.

4 THE COURT: You're asking a bunch of new  
5 questions now.

6 MS. FOX-YOUNG: No, the question on the  
7 table --

8 THE COURT: Well, the question was who has  
9 received. So now you're asking for the identity of  
10 this one witness.

11 MS. FOX-YOUNG: Who has received an FBI  
12 lump sum benefit in this case. That's the question.  
13 Who received one.

14 THE WITNESS: I can't remember all the  
15 names. I think there have been three. And I was  
16 trying to define what a lump sum is.

17 THE COURT: Let's do this: You go back  
18 and talk to your FBI people, see if you can disclose  
19 these three names, and let's deal with this down the  
20 road.

21 MR. BECK: Sounds like one way to get  
22 through it, just have people involved in the  
23 investigation, the SNM, receive lump sum.

24 THE COURT: How do you know? And then we  
25 move on. I don't think the names are important.

1 And if you say they're connected with this FBI  
2 investigation --

3 MS. FOX-YOUNG: Well, Your Honor --

4 THE COURT: Well, that's not their  
5 question. She wants the answer. So Mr. Acee can  
6 find out the answer. And if he can give it, he'll  
7 give it, and we'll move on. If he can't give it,  
8 then I'll figure out what to do.

9 All right. Let's tell the jury we're  
10 going to take our afternoon break at this time, and  
11 we'll be in recess until 4:00.

12 (The Court stood in recess.)

13 THE COURT: All right. Let's go on the  
14 record. I'd ask the Government's attorneys to be  
15 involved with these discussions that Mr. Acee is  
16 going to have. Don't just leave Mr. Acee out there,  
17 trying to figure out a legal issue. So I need the  
18 Government to get involved in that discussion and  
19 see if this can be released; and if not, tell me why  
20 not, and try to be lawyers in this thing, and argue  
21 it, either agree that it can be disclosed or not.  
22 But don't just leave Mr. Acee out there, having to  
23 deal with legal counsel and trying to interpret it  
24 here. So I'll ask the Government to get involved in  
25 those discussions.

1 MS. FOX-YOUNG: Your Honor, I've talked  
2 with Mr. Beck, and I think I can move on. I think  
3 there was some confusion as to what the benefit was,  
4 and who the three individuals are who we're talking  
5 about. But I think I understand now from Mr. Beck,  
6 and I don't intend to elicit any more on this line  
7 of questions.

8 THE COURT: Okay. So Mr. Acee doesn't  
9 need to do anything?

10 MS. FOX-YOUNG: I think we can just leave  
11 it, Your Honor. I'll move on to the next question.

12 THE COURT: All right.

13 Let me -- Ms. Duncan, on your transcript  
14 that you sent to Ms. Standridge, I don't think a  
15 limiting instruction on that testimony is necessary.  
16 Because Mr. Cordova's testimony that Baby G and Mr.  
17 Baca are close isn't hearsay, and doesn't suggest  
18 that the Perez' statements should be used against  
19 Baca. So I'm not going to do anything further on  
20 that one.

21 I'll still wait for yours, Ms. Jacks,  
22 because yours is the one that I think concerned me a  
23 little bit more.

24 MS. JACKS: I'm sorry. I didn't have time  
25 at lunch because I was meeting with witnesses, but

1 I'll get it tonight.

2 THE COURT: Just get it to me. But I'm  
3 not going to add your limiting instruction on that.

4 Let me see if I can get -- before the jury  
5 comes in -- let me repeat something, so what I'm  
6 then about to say makes sense. Establishing that  
7 Mr. Baca violated VICAR by conspiring to commit  
8 assault resulting in serious bodily injury, in  
9 violation of New Mexico law, requires, as I said  
10 before we took the break, the United States to  
11 prove, one -- and Mr. Baca's conduct constitutes  
12 generic conspiracy to commit assault resulting in  
13 serious bodily injury; and two, that Mr. Baca's  
14 conduct also violated New Mexico law. That  
15 structure, identifying conduct that falls within a  
16 generic category, and also violates a state or  
17 nonracketeering federal law, features prominently in  
18 federal racketeering statutes.

19 So when I have a chance, I'll give you the  
20 cases. But that's the setup for what I'm about to  
21 give you. So next time you hear from me, I'm just  
22 going to give you cases instead of talking. All  
23 right.

24 All rise.

25 (The jury entered the courtroom.)



1 THE COURT: All right. Everyone be  
2 seated.

3 All right. Mr. Acee, I'll remind you that  
4 you're still under oath. Ms. Fox-Young, if you wish  
5 to continue your direct examination of Mr. Acee, you  
6 may do so at this time.

7 MS. FOX-YOUNG: Thank you, Your Honor.

8 BY MS. FOX-YOUNG:

9 Q. Agent Acee, before the break we talked a  
10 little bit about benefits that some of the  
11 government witnesses in this case have received;  
12 isn't that right?

13 A. Yes.

14 Q. And you agree with me that a number of  
15 witnesses received a huge benefit, in that they were  
16 never prosecuted for murders in which they were  
17 implicated, right?

18 A. I can think of one person, yes.

19 Q. You can think of Billy Cordova right off,  
20 right?

21 A. No.

22 Q. You don't recall that Billy Cordova was  
23 not prosecuted in the RICO case for multiple  
24 murders, assaults, and other criminal conduct that  
25 you had been compiling?

1           A.     The evidence didn't suggest he did it, so  
2 I can't charge him.

3           Q.     I thought it was clear from your testimony  
4 earlier in this case and earlier today that you  
5 think Billy Cordova absolutely was implicated in the  
6 murder of Sammy Chavez, right?

7           A.     I agreed with you that informants told me  
8 that Billy told them. That doesn't constitute  
9 evidence, probable cause for me to charge him on  
10 that alone.

11          Q.     Based on Billy Cordova's statements to you  
12 and his testimony to this jury, and if this is all  
13 he did, that he gave instructions as to how to  
14 commit the murder, you think he's implicated on that  
15 basis, don't you?

16          A.     I think I can use those as overt acts,  
17 yes.

18          Q.     And you were compiling those overt acts?

19          A.     Yes. That particular overt act I didn't  
20 know about until I interviewed him, though.

21          Q.     Okay. But you elected not to charge him?  
22 You elected not to pursue him as a defendant in that  
23 RICO case?

24          A.     No, I didn't. In fact, I pushed to charge  
25 him.

1 Q. Wasn't it your prior testimony that you  
2 instructed Agent Neale to stop compiling overt acts  
3 on Billy Cordova?

4 A. I did. And then we resumed. I said that  
5 in front of Billy Cordova, but we resumed.

6 Q. But ultimately, Billy Cordova was not  
7 charged, right?

8 A. He was not.

9 Q. And isn't that something of a significant  
10 benefit?

11 A. It could be.

12 Q. Okay. In addition, the jury has heard,  
13 and you have heard, and you have witnessed numerous  
14 other benefits that these witnesses received: The  
15 ability to have sex and other contact visits with  
16 their families, right?

17 A. They -- a few of them were able to do  
18 that, four of them.

19 Q. And parties where they could all get  
20 together around the holidays, right?

21 A. The pizza party, yes.

22 Q. And in Mario Rodriguez' words, the  
23 opportunity to serve easy time in the fed, right?

24 A. Mario has never been in the feds.

25 Q. But those are his words?

1 A. Those were his words.

2 Q. And Frederico Munoz and Lupe Urquizo got  
3 to make that choice, right?

4 A. They made the choice to get charged in the  
5 feds, yes.

6 Q. And Billy Cordova had the same choice,  
7 right, but ultimately was not charged at all?

8 A. Yes.

9 Q. All right. Agent Acee, you're aware that  
10 a number of these government witnesses were housed  
11 together during the course of the investigation of  
12 this case, right?

13 A. Yes.

14 Q. And you, in fact, yourself sometimes  
15 facilitated having them confer with one another,  
16 right? I'll give you an example. You remember  
17 testifying that in August 2017, Lupe Urquizo and  
18 David Calbert had the opportunity to confer together  
19 about their testimony for the Government?

20 A. Yes, at the FBI office.

21 Q. And then after that time, David Calbert  
22 magically started telling the same story that --

23 A. My last answer is not correct. Because  
24 you said to get their stories straight, or to  
25 confer. They conferred, but it wasn't about their

1 stories.

2 Q. Okay. You agree that they conferred?

3 A. I agree that they met in front of me at  
4 the FBI office, and they met for 10 minutes with  
5 their attorneys.

6 Q. And you don't know what was said when they  
7 met for 10 minutes behind closed doors, right?

8 A. No.

9 Q. And then magically, after that time, David  
10 Calbert started telling the same story that Lupe  
11 Urquizo was telling, right?

12 A. Their stories are for the most part  
13 similar.

14 Q. And after that time, Lupe Urquizo was  
15 tasked with bringing Mario Rodriguez on board, was  
16 he not?

17 A. No. No, I don't agree with that.

18 Q. Do you remember Lupe Urquizo's testimony  
19 and the call that he made -- we talked about getting  
20 five years off if he could get that guy, Blue, to  
21 come on board?

22 A. Yeah, but to say he was tasked, he wasn't  
23 by me, because Blue was represented.

24 Q. Okay.

25 A. I'm not able to task an informant and send

1 an informant after someone who has an attorney.

2 Q. So these government witnesses, where they  
3 were housed together, they had months and months to  
4 study the electronic materials, the discovery in  
5 this case, right?

6 A. Not all the witnesses, cooperating  
7 defendants, had tablets.

8 Q. Those who were charged had tablets, right?

9 A. For a period of time. And then they were  
10 taken.

11 Q. And that gave them time to figure out just  
12 exactly what they needed to say that would qualify  
13 as substantial assistance to the Government, right?

14 A. No.

15 Q. Because they all wanted the Government to  
16 reach that same magic conclusion for them that they  
17 had provided substantial assistance?

18 A. I don't know what they want. But they  
19 gave their statements to me, many of them before  
20 they had tablets.

21 Q. Okay. Well, you gave some witnesses a  
22 roadmap as to where to look to find the information  
23 for their testimony, didn't you?

24 A. No.

25 Q. Did you ever tell them that all the truth

1 is in the tablet?

2 A. That's the truth about the SNM, guys dry  
3 snitching and turning their backs on each other.  
4 I've made that kind of a statement before.

5 Q. Did you make the statement to witnesses in  
6 this case that "All the truth is in the tablet"?

7 A. I think I just answered that. What I'm  
8 telling them -- for example, Angel Munoz ratted. A  
9 lot of these guys didn't know that. I said, "Look  
10 at the tablets. I've turned everything over."

11 Let me be clear, though. I've never  
12 looked through the tablet. I just know --

13 Q. My question is just if you made that  
14 statement to the witnesses in this case?

15 A. And I'm saying I may have.

16 Q. Well, would you like me to show you a  
17 transcript to refresh your memory?

18 A. Sure.

19 Q. Agent Acee, do you see here on this  
20 transcript where your response to Mario Rodriguez,  
21 with Ron Sanchez in the room, was "All the truth is  
22 in the tablet"?

23 A. Yes.

24 Q. The truth is that a whole lot of what the  
25 witnesses in this case have said isn't true at all,

1 is it?

2 A. No, I don't agree.

3 Q. That's not the truth?

4 A. No.

5 Q. In fact, in your own words, half the  
6 people who talk to you are bullshitting. Haven't  
7 you said that?

8 A. I don't know that that's fair.

9 Q. Well, are those your words?

10 A. Yes.

11 Q. So in speaking about the witnesses in this  
12 case, you did say, "We know half the people that  
13 talk to us are bullshitting," right?

14 A. I'm saying, in my line of work, half the  
15 people --

16 Q. I'm just asking if you made that  
17 statement.

18 A. I did. And I'm explaining what I meant by  
19 it. I don't have to explain, though.

20 Q. And you went on to say, "But we have to  
21 write it down anyway," didn't you?

22 A. When I'm taking someone's statement, I  
23 write down what they say.

24 Q. Are those your words: "Half the people  
25 that talk to us are bullshitting, but we've got to



1 write it down anyway"?

2 A. They may be.

3 Q. Would you like me to show you the  
4 transcript?

5 A. Please.

6 Q. Agent Acee, do you see here where those  
7 statements are?

8 A. Yes.

9 MS. FOX-YOUNG: No further questions, Your  
10 Honor.

11 THE COURT: Thank you, Ms. Fox-Young.  
12 Other defendants -- or is this where we're going to  
13 take a break and call some other witnesses?

14 MS. JACKS: This is where we requested to  
15 call other witnesses.

16 THE COURT: The defendants have some  
17 witnesses they need to get on and off, so we're  
18 going to ask Mr. Acee to step down.

19 Thank you for your testimony, Mr. Acee.  
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22  
23  
24  
25

1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3

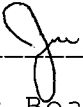
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 22nd day of March, 2018.

13

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